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IPC
PERSPECTIVES
INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

Ontario

TOM WRIGHT, COMMISSIONER

Key Challenges Conference 1991

THIS YEAR'S KEY CHALLENGES CONFERENCE, HELD in Toronto on October 24 and 25, offered keynote speakers, panel discussions and workshops on current issues in access and privacy in Ontario. It brought together more than 350 participants from provincial and local governments, school boards, police departments and other institutions covered by the *Acts*.

This sell-out conference was co-sponsored by the Office of the Information and Privacy Commissioner/Ontario; the Freedom of Information and Privacy Branch, Management Board Secretariat; and the Institute of Public Administration of Canada.

The following are excerpts from Information and Privacy Commissioner Tom Wright's keynote address where he considers the responsibilities of governments in Ontario regarding access and privacy:

Whatever our role, I believe we are all engaged in one of the most important functions of government – making the "business" of government known to the public. In that

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Enjoying a brief break in conference proceedings are, from left to right: Frank White, John Grace and Tom Wright.

Working Together

Yet, at the most basic level – such as a response to an FOI request – how do the respective organizations interact?

THE OFFICE OF THE INFORMATION AND PRIVACY Commissioner (IPC), the FOI Branch of Management Board Secretariat (MBS), and FOIP Co-ordinators (FOIPC) – each has a role to play when it comes to access and privacy legislation in Ontario. However, it is not always an easy task to understand exactly how they interact. Can an individual make an FOI request through the IPC? Should an institution contact the IPC when it wants legislative guidance on an issue? Does MBS issue an order to release a record?

These are some of the questions that are regularly asked of us. It is the role of the IPC to consider and balance, in the form of an appeal or compliance investigation, the sometimes competing interests of access and privacy. FOIPCs across the province have a similar task – weighing the competing interests of access and privacy in the context of their own organizations. MBS is responsible for supporting and providing guidance to institutions regarding access and privacy matters.

Yet, at the most basic level – such as a response to an FOI request – how do the respective organizations interact? The following steps describe, in simple terms, how an individual's access and privacy rights are dealt with in Ontario. Everyone has an important role to play, as well as a significant duty towards ensuring that the system works as it was intended.

1. An individual contacts the institution to request a record.

2. Before deciding whether or not a record will be released, an institution may consult reference materials or – when further guidance is needed – a policy advisor at MBS.

3. The institution makes a decision regarding access to the record.

4. **If** the individual disagrees with the institution's response, he or she **may** appeal the decision to the IPC.

5. Once an appeal has been received, the IPC appoints an Appeals Officer and the mediation process begins.

6. If mediation is not successful in settling an appeal, the appeal proceeds to an inquiry. The final decision comes from the Commissioner or Assistant Commissioner in the form of an order.

IPC Renames Newsletter

WELCOME TO THE PREMIER EDITION OF *IPC Perspectives*. Formerly called *Newsletter*, this publication takes a fresh look at topics of interest to those interested in Ontario's freedom of information and protection of privacy legislation.

After receiving responses from a survey sent to a selection of *Newsletter* readers last fall, the IPC undertook a revision of both content and design. We are pleased to report that the results were extremely positive.

Here is a summary of some of the findings:

- 81% of all respondents prefer a quarterly newsletter;
- 30% found privacy and access articles of interest;
- procedural information and "The Commissioner's Message" were found to be particularly useful;
- readers suggested the addition of a question-and-answer column;
- a preference was stated for a clearer, easier-to-read format;

Reflecting universal concerns, *IPC Perspectives* is printed on Canadian-made recycled paper, using only vegetable-dye inks.

Key Challenges Conference 1991

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function, we all have important roles to play, as well as significant responsibilities toward ensuring that the system works as it was intended.

The actual tasks in which we are engaged – safeguarding citizens' rights to their own privacy and access to government information are, I believe, some of the most significant jobs in government today...

Governments must start from the premise that the public has a right to information and, in fact, I would argue that it is to government's advantage to make as much information available as is possible.

If the public knew more about the genuine efforts being made on its behalf by every municipal government and school board, by the provincial and federal governments, the current mood of cynicism might begin to dissipate. If governments made greater efforts to show how decisions are made, they might have greater success in explaining the tough, difficult ones.

The economic situation these days is such that hard decisions have to be made. No one would argue with that. But at a minimum, the public must have the chance to understand how and why those decisions are made. Full participation in the democratic process is only possible if there is a fully informed public.

I believe this is particularly true for those of you working in local government. Decisions made by local government touch people's lives the most closely – on their street, in their schools, in their neighbourhoods. Tangible decisions about money, people and programs have a major impact on daily life in the community. The public wants to know how those decisions are made...

The IPC also has a role to play. We consider ourselves to be advocates for the principles of access and privacy. We believe it is our responsibility to speak up for the rights and expectations of the public.

But I also believe in applying common sense to the exercise, and in trying to make any recommendations and decisions based on reality as it exists, not as we believe it to be.

To that end, we have begun a number of initiatives which I believe will help us all. We are implementing a provincial "road show" which will take me and others in my office to provincial and local institutions across the province. We hope to meet with elected representatives, heads and co-ordinators in the weeks and months ahead. We want to hear their, and your, comments, concerns and suggestions on how we might best work together to make the *Acts* work as they were intended...

While I believe in the *Acts*, in the rights they give the public and the responsibilities they place on all governments, I also understand that freedom of information is not the only business of your organization; not the only set of challenges you have to face. However, I believe it must become an integral part of the day-to-day business of your organization. I am committed to the principles of access and privacy, and want to help you achieve the same level of commitment. ■

Key Challenges panellists discuss, "Ethics, Access and Privacy: What are the issues for public institutions?"

The Year 1991 in Review

The following are some of the main events of 1991, as they relate to freedom of information and protection of privacy in Ontario

JANUARY 1
The M*unicipal Freedom of Information and Privacy Act* comes into effect; significant media reaction to possibility that police won't release names of crime victims and that fire departments may withhold addresses;

FEBRUARY 4
The establishment of a task force to examine computer matching practices is among the recommendations made by the IPC to the Standing Committee on the Legislative Assembly reviewing the provincial *Act*;

FEBRUARY 7
Ontario's Solicitor General issues a summary of guidelines to police departments – a clarification of the municipal *Act* as it relates to the release of crime victims' names;

MARCH
The Ontario Fire Marshal's office rules that fire departments may legally release the addresses of fires and names of building owners and tenants as long as their names already appear on public documents;

APRIL 4
The H*ealth Card Numbers Control Act* comes into effect, restricting the collection and use of another person's health card to health-related professionals;

APRIL 9
The Ontario government releases a statement of principles warning employers that it is illegal to discriminate against people with AIDS;

APRIL 15
Ontario's Health Minister announces expansion of anonymous testing for AIDS throughout province;

APRIL 17
The Senate endorses appointment of Bruce Phillips as federal Privacy Commissioner;

APRIL 18
Ontario's Health Minister resigns after publicly disclosing the name of an individual receiving medical treatment in the United States;

An IPC investigation concludes that a Toronto firehall had no authority to post the addresses of HIV patients;

APRIL 25
An all-party committee of the House appoints Tom Wright Ontario's new Information and Privacy Commissioner;

JULY 4
Federal Privacy Commissioner Bruce Phillips calls for legislation to regulate video surveillance, cellular-telephone monitoring and payphone wire-tapping;

JULY
Ontario okays testing of OHIP "smart cards" – equipped with computer chips that will enable health care users to carry their complete medical records at all times;

SEPTEMBER 9
Management Board of Cabinet Chair Tony Silipo releases "whistleblowing" discussion paper;

OCTOBER 24/25
FOIP delegates from across the province attend "Key Challenges", Ontario's third annual access and privacy conference;

DECEMBER 11
The Standing Committee on the Legislative Assembly tables its review of the provincial *Act* in the Legislature;

Ontario's Health Minister asks Commissioner Wright to investigate a possible disclosure of confidential records, by the Ministry, about a Sudbury doctor.

Q&A

Q & A will be a regular column featuring topical questions directed to the IPC.

Q: *I have heard that municipal and provincial FOI Co-ordinators are being requested to include more information in their decision letters. Why is this necessary?*

A: Periodically, the IPC receives Notices of Appeal from appellants that lack important information, thereby delaying the processing of appeals. When certain information is not conveyed to the IPC, the Registrar of Appeals must contact the FOI Co-ordinator who must, in turn, take time to locate the relevant request. To reduce the workload for FOI Co-ordinators and to assist the IPC in the efficient handling of appeals, local and provincial institutions are requested to add a paragraph to their decision letters. The addition should indicate that, if a requester launches an appeal with the IPC, he or she should provide this agency with:

1. The file number which the institution has assigned to the request, and if possible,

2. A copy of the decision letter and the original request for information.

Q: *I recently applied for a job, and didn't understand why certain questions on the application form were being asked, or how the information would be used. What should I do?*

A: If this was a provincial or municipal government application form, you can contact the FOI Co-ordinator in the institution and ask why the institution needs the information in question, and how it relates to the application process. If you feel a government institution has wrongfully collected, used or disclosed your personal information, you can send a letter to the Commissioner stating why you feel your privacy has been invaded. The IPC will work with you and the institution to try and resolve the matter.

Publications from the IPC

The following documents are available free of charge, from the Office of the Information and Privacy Commissioner/ Ontario.

BROCHURES:
The Appeals Process (new)

Your Introduction to Ontario's Information and Privacy Commissioner

Your Privacy and Ontario's Information and Privacy Commissioner

POCKET GUIDES:
Ontario's Freedom of Information and Protection of Privacy Act

Ontario's Municipal Freedom of Information and Protection of Privacy Act

PUBLICATIONS:
HIV/AIDS In The Workplace

HIV/AIDS: A Need for Privacy

Guidelines on Facsimile Transmission Security

Update on 1989 Guidelines on Facsimile Transmission Security

Guidelines on the Use of Verbatim Reporters

Computer Matching

Annual Reports (1988, 1989, 1990)

Summaries of Appeals 1988-1989

New Procedures in Appeals

... the prompt receipt of records is essential for the timely and efficient processing of appeals.

ONE OF THE KEY FUNCTIONS OF THE OFFICE OF the Information and Privacy Commissioner (IPC) is to hear appeals from individuals who have been denied access to either general records or personal information. As soon as an appeal is received at the IPC, an Appeals Officer is appointed to mediate the case.

Before the process of mediation can begin, it is necessary for the IPC to obtain and review the information or document to which the appeal relates. As it is virtually impossible for an Appeals Officer to consider any settlement initiative without having a copy of the record at issue, the prompt receipt of records is essential for the timely and efficient processing of appeals.

In order to ensure that all institutions comply with their legal obligation to provide appeals-related documents to the IPC, the agency has recently adopted new procedures regarding the receipt of records from institutions.

In brief, the procedures state that:

1. An institution is required to remit the records in an appeal to the relevant Appeals Officer within 21 days from the date that the institution receives the "Confirmation of Appeal" notice.

2. This 21-day period may be briefly extended only if the institution can provide reasonable justification for the delay.

3. Where the IPC has not received the required record within the stipulated time frames, the Appeals Officer will request that the Commissioner issue an Order for Production, ensuring the records are sent by a specific date.

These procedures were created to be fair to everyone concerned with an appeal, while acknowledging there may be instances where exceptional circumstances mean an institution cannot meet the 21-day deadline. On these rare occasions, institutions are urged to communicate with the Appeals Officer assigned to the file in order to discuss the matter.

The IPC appreciates the co-operation of provincial and municipal co-ordinators in helping to make the appeals process quicker and more efficient.

Upcoming Conference

Third Party Information in Ontario, Protecting and Releasing it: *What you need to know*

FEBRUARY 18, 1992, SHERATON CENTRE, TORONTO

This one-day training session examines commercial confidentiality and third party access and intervention – in relation to current access and privacy legislation.

For further information and registration, contact Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto M5G 2G4; telephone (416) 593-7352; facsimile (416) 593-0249.

Coming up next issue:

The IPC shares its perspective on the Standing Committee's review of the provincial *Act* in the Legislature. The article will feature highlights from the review, tabled December 11, 1991.

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

TOM WRIGHT, COMMISSIONER

1992 – A Year of Innovation

THE OFFICE OF THE INFORMATION AND PRIVACY Commissioner has designated 1992 as our "Year of Innovation". We will be utilizing the knowledge acquired in our first four years of operation to introduce positive change. Our goal is to improve communications and where appropriate, fundamentally change appeals and compliance practices and procedures so that they work better for the public, provincial and municipal institutions, and our own staff..

One of the first areas we are reviewing is communications. Many of the problems we encounter stem from misunderstanding or

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Commissioner Tom Wright with Communications Manager Sarah Jones (left) and Executive Assistant Gayle Martin (right).

With An Eye To Privacy

It is through forums such as the one provided by the Westminster Institute, that we are able to gain fuel for further discussion and debate...

ON MARCH 26, 1992 THE WESTMINSTER INSTITUTE for Ethics and Human Values invited Dr. Ann Cavoukian – Assistant Commissioner, and John Eichmanis – Manager, Strategic Planning and Policy Development, to participate in a workshop to discuss two privacy-related concerns: Genetic Testing and Privacy; and Privacy and Health Information – Practice and Research.

The significance of this workshop lies in the consideration, not only of the topics themselves, but also of its host. Established in 1979, the Westminster Institute was restructured in 1991 as a partnership among Westminster College, The University of Western Ontario, St. Joseph's Health Centre and Victoria Hospital Corporation. It is a high-profile organization whose activities consist of teaching, conducting research and providing consulting services in applied ethics. The institute is attempting to raise the profile of a number of important issues, including such privacy-related ones as genetic testing and the privacy of health information.

The IPC actively participates in as many public forums as possible. As part of its mandate, the IPC conducts research on access and privacy issues and provides advice on proposed government legislation and programs. It is through forums such as the one provided by the Westminster Institute, that we are able to gain fuel for further discussion and debate – an essential element to affecting future decisions and policies.

With respect to genetic testing, the privacy issues are profound. Genetic information can reveal highly sensitive information about an individual, which if made available to employers, could have serious and lifelong consequences. For this reason, the IPC is currently preparing several papers on various aspects of "workplace privacy" as a means of stimulating public discussion and debate. In the process, we hope to shed some light on the implications of genetic testing.

With regard to health information, we have had a number of positive discussions with the Ministry of Health. It is evident that broad legislation controlling the collection, retention, use, disclosure and security of medical information – wherever it may reside – is urgently needed. We therefore look forward to the Ministry of Health's formal consultation paper which will identify the broader confidentiality issues to be considered in the draft bill.

Privacy concerns such as those involved in genetic testing and medical information have serious implications for Ontario residents. The privacy and confidentiality concerns regarding the use of health information for research purposes must be clearly delineated.

The IPC will continue to actively participate in public forums and dialogues such as the one hosted by the Westminster Institute.

Upcoming Conferences

Access '92 – Access and Privacy in the Global Environment
APRIL 23 AND 24, 1992, OTTAWA CONGRESS CENTRE

For further information and registration, contact Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto M5G 2G4; telephone (416) 593-7352; fax (416) 593-0249.

COGEL – SEPTEMBER 23 - 25, 1992, TORONTO HILTON

The "Council on Government Ethics Laws" will feature four freedom of information related sessions during the Fall conference in Toronto. Mark your calendars and stay posted for further details!

The Municipal Team

...to date, 97 percent of the appeals under the municipal Act have been settled by mediation.

RECOGNIZING THE DIFFERENCES BETWEEN PROvincial and municipal organizations, and gearing up for an anticipated inflow of appeals following the introduction of the municipal *Act*, the IPC has developed a pilot project specifically geared to municipal appeals . As a result the Municipal Appeals Team was formed in September 1991.

Composed of five appeals officers and one supervisor, the team's primary goal is to assist municipal institutions covered by the *Act* by increasing their familiarity with the legislation. At the same time, the team is striving to hone its own skills in the municipal "field", to address issues particular to municipal institutions and to provide smoother processing for quicker results. The team believes that assisting the local institutions will enhance municipalities' service to the public.

Part of the municipal team's mandate is to determine whether processes already developed for the handling of provincial appeals are appropriate for meeting the needs of a wide range of municipal institutions – from large and small municipalities to police commissions, school boards and joint boards of management.

The team has found that, despite some initial confusion and varying degrees of familiarity with the *Act*, most institutions have a good sense of its application.

In working with a variety of municipal institutions, the team has also noted unique differences between large and small institutions. Like his or her provincial counterpart, the co-ordinator for a large municipality may have more training opportunities, as well as staff to help deal with the volume of requests. By contrast, a co-ordinator in a smaller community seldom has staff support. He or she works in close association with the "head" or decision-maker – and in many instances, serves as decision-maker as well.

Municipal requesters tend to have a closer connection with local institutions, which usually results in a shared desire to settle matters. And while there are difficulties intrinsic to municipal mediation, it appears that, on balance, the process is effective. This is supported by the fact that, to date, 97 percent of the appeals under the municipal *Act* have been settled by mediation.

By focusing on municipal appeals, the team has succeeded in establishing good working relations with many of the municipal institutions. Pleased to discover that the *Act* is working well, they plan to continue their efforts to develop new and improved strategies for dealing with the unique character of municipal appeals.

The IPC Municipal Appeals Team.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I have been charged a fee for accessing information. I think the fee is too high. What can I do?*

A: You can appeal to the Office of the Information and Privacy Commissioner (IPC). An appeal is the way to ask for a review of a government organization's response to your request.

Within 30 days of receiving a decision from the government organization, write a letter to the IPC. You should include:

1) a description of the situation;

2) the file number on the government organization's response letter to you;

3) a copy of the government organization's response to you;

4) a copy of your original request for information, if its available.

You will receive a letter confirming receipt of your appeal. An Appeals Officer will be assigned and he or she will contact you by letter or phone.

Three-Year Review – Highlights

A brief look at what's happened, and what's next regarding the three-year review.

ON DECEMBER 12, 1990, THE STANDING COMmittee on the Legislative Assembly met, as mandated, to begin their review of the *Freedom of Information and Protection of Privacy Act, 1987* (the *Act*). A year later, on December 11, 1991, the Committee unanimously approved the recommendations from the review and tabled its report in the House.

During the year of review, the Committee held a number of public meetings and received 61 written submissions. After a great deal of consideration the Committee presented its report encompassing 81 recommendations. Highlights of the suggested changes propose that:

• historical records from the Archives of Ontario be more readily available;

• the Ontario government should encourage private sector corporations to develop and implement voluntary privacy protection codes;

• the Commissioner be given powers to order the cessation of any inappropriate collection, use, retention or disclosure of personal information by any organization covered by the *Act*;

• a Task Force be created to examine the practice of computer matching and its associated privacy concerns within the Ontario Government;

• the *Act*'s exemptions be narrowed, and the public interest override be made more workable.

What happens next? Management Board of Cabinet will study all the Committee's recommendations and will prepare a cabinet submission regarding suggested amendments to the *Act*. Once these amendments have been discussed, a bill will be introduced to the House.

Copies of the report submitted by the Standing Committee on the Legislative Assembly are available from **Publications Ontario**, 880 Bay Street, Toronto, Ontario, M7A 1N8. Telephone: (416) 326-5300.

Public Bios a Good Idea

Commissioner Wright makes a suggestion.

IN A RECENT MUNICIPAL ORDER, COMMISSIONER Tom Wright upheld a head's decision to withhold a record – a public official's resume. The decision was in accordance with the requirements of the *Act*. However, it was the Commissioner's view that members of the community are entitled to some information about the persons who represent their interests. Accordingly, he recommends the use of public biographies as a means to respond to such requests for information.

"... I encourage institutions, in keeping with the spirit of the *Act*, to prepare a brief biography of appointees to public positions on boards and commissions, and to make these biographies available to interested members of the community."

Biographies would allow interested persons access to highlights of an individuals expertise and contribution to the community as it pertains to his or her public appointment. Details of a personal nature that don't pertain to the present position should not be included.

Any institution considering public bios, should keep the content brief and to the point. A bio could include: name and position; business address; plus relevant educational and professional background. See sample.

If an institution is preparing such material, all appointees should be notified in writing that a biography will be prepared and made publicly available upon request.

SAMPLE BIO:

Jane Citizen

Jane Citizen, of Anyplace, Ont. was recently appointed to the Anyplace Advisory Committee for Parks and Recreation.

Ms. Citizen has lived in Anyplace for the past 10 years. She has considerable volunteer experience in the community, having served as a board member for several local recreational associations, as the president of the Anyplace Tennis Club, and as president of the East Anyplace Neighbourhood Association. She is also a former medal winner for Canada in speed skating at the 1968 Winter Olympics.

Ms. Citizen is President of Jane Citizen Electronics in Anyplace. She has a degree in engineering from the University of Toronto.

Public Outreach Update

THE IPC'S ONTARIO-WIDE OUTREACH PROGRAM, designed to bolster public awareness of the *Acts*, has commenced. Tom Wright, Ann Cavoukian, Tom Mitchinson and IPC staff have begun the first leg in a tour that will encompass most of the province.

The Commissioner's program begins by meeting with deputy ministers. He will then meet with heads of government organizations covered by the municipal *Act*. But the bulk of the outreach will be achieved through province-wide public speaking.

To support the Commissioner's "road show", IPC staff are stepping up participation in external speaking engagements. Aimed at provincial and local organizations, as well as the public, these sessions will provide participants with a better understanding of the *Acts*.

Anyone interested in engaging a speaker from the IPC or in obtaining further information, please contact the Communications branch.

1992 – Year of Innovation

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lack of awareness of specific procedures or practices. To address this, we are revitalizing our informational materials.

We started with this newsletter *Perspectives*. It features a clearer, easier-to-read format and suggestions by our readers, such as a question and answer column.

Shortly, two new publications will appear. *Précis* will contain concise highlights of orders and compliance investigations. *Practices* will provide helpful explanations and guidance with respect to specific IPC procedures and practices.

This year, we will also add new pamphlets to our list of publications. They will address access, privacy and the appeal process.

In all these publications, the emphasis will be on helpful, practical information that is clearly expressed and easy to read.

Our efforts to educate and inform through print publications will be enhanced by our training programs for Freedom of Information Co-ordinators. To date, our training has been developed primarily as a general orientation for provincial and then municipal co-ordinators.

As Co-ordinators have become more familiar with the legislation, they have come to us with queries which are often unique to their own area of service. In response to these queries, we are now developing training programs to meet their particular access and privacy needs, as well as their levels of understanding.

A review of our appeal process, which is a major priority, is currently underway. As of the end of December 1991, the percentage of appeals received by the Appeals Department had risen by 97 per cent over the comparable period in 1990 (from 408 to 804). Approximately 93 per cent of this growth is attributable to municipal appeals, while 4 per cent is accounted for by provincial appeals. In addition to this dramatic increase, we have also received a further 873 appeals from a single appellant.

We will be telling you more about our plans and priorities for this year in upcoming editions of *Perspectives*. In the meantime, I invite you to join with us in this year of innovation. If you have ideas as to how we can make our operations more relevant for you, please let us know. Your comments and suggestions are always welcome. ■

Tom Wright
Commissioner

Coming up next issue:

Perspectives takes a look at freedom of information and protection of privacy legislation across Canada.

Also, watch for more on the September COGEL conference.

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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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TOM WRIGHT, COMMISSIONER

Customer Service: Focus of Changes to the Appeal Process

SINCE THE INTRODUCTION OF FREEDOM OF information legislation, the people of Ontario have shown that they value the right to request government-held information. Responding to the public desire for high quality service is a significant challenge which requires continuous review and reassessment to ensure excellent client service.

The IPC has listened to the comments and suggestions of institutions and appellants and has completed a review of the appeal process.

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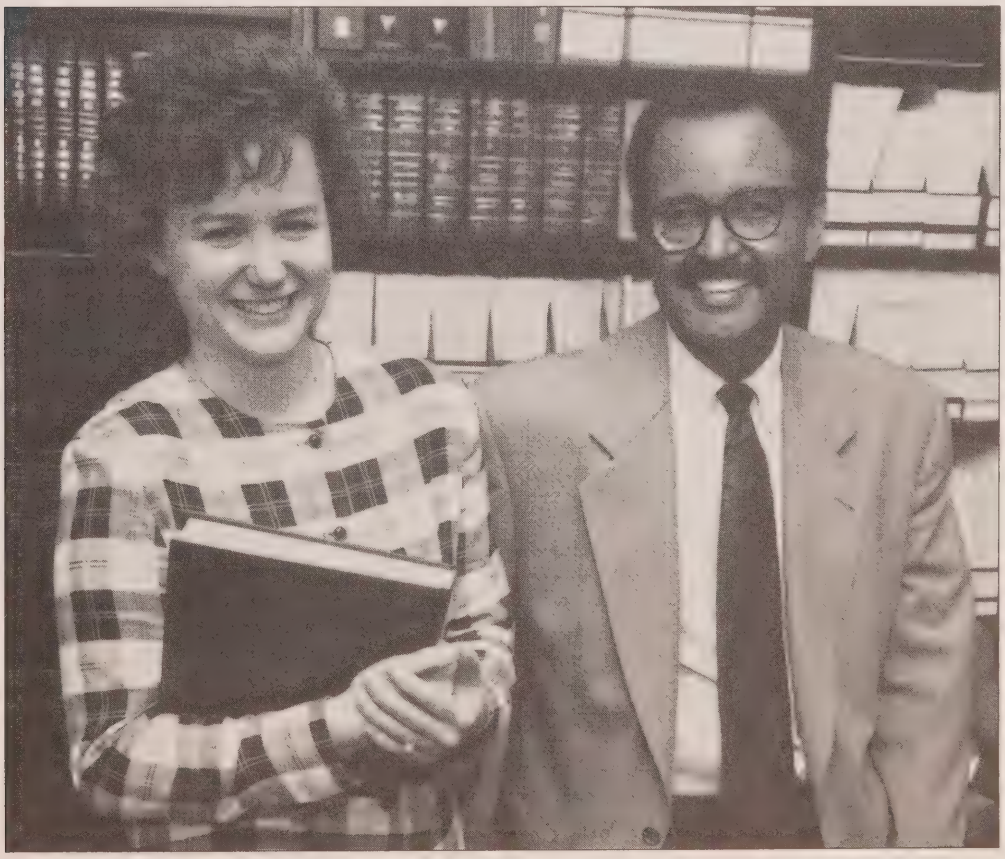

The IPC's first Inquiry Officers: Holly Big Canoe and Asfaw Seife

The Appeal Process: Orders only tip of iceberg

Though the most visible outcome of an appeal is the order, relatively few cases are settled in this manner.

UNDER THE *ACTS*, A PERSON MAY REQUEST: access to general records and his or her own personal information; or correction of his/her own personal information from a government organization. Anyone who is not satisfied with the government's response to a request has the right to appeal the decision to the Information and Privacy Commissioner/ Ontario (IPC).

The Appeals Officer assigned to the appeal reviews the circumstances of the case and verifies the government organization's position. Acting as a go-between, he or she will also try to settle the appeal or simplify the issues, based on discussions with the appellant and the government organization. The Office of the Information and Privacy Commissioner tries to settle the issues at appeal, before resorting to an order.

Though the most visible outcome of an appeal is the order, relatively few cases are settled in this manner. The conclusion of an appeal can be determined through mediation; an order from the Commissioner, Assistant Commissioner or designated decision maker; or it can be abandoned or withdrawn.

The following statistics give a breakdown on how active appeals are closed. Of the 437 appeals closed in 1991, only 79 (18 per cent) were resolved through the issuance of an order. Of the remaining 358 appeals, 344 (79 per cent) were settled through mediation or were withdrawn. The remaining 14 (3 per cent) were either abandoned or found to be beyond the jurisdiction of the Commissioner's office.

Clearly, the large proportion of appeals are resolved by means other than by issuing orders. To keep readers regularly informed on the volume of appeals processed each quarter, the IPC will publish appeals-related statistics in each issue of *IPC Précis*. Also, every second issue of *IPC Perspectives* will briefly discuss the most recent statistics as they pertain to the number of appeal files opened and closed.

A Global Perspective

FREEDOM OF INFORMATION AND PROTECTION of privacy are not new concepts, either in Ontario or worldwide.

The first country to introduce a formalized system of access to government information was Sweden, in 1766. Today, most countries in the European Community have data protection legislation that applies to both the public and private sectors. However, apart from Sweden, most European countries do not have access legislation. The United States and other countries such as Australia and New Zealand have both access and privacy laws that apply to the public sector only.

Within Canada, access and privacy legislation currently applies to the public sector. The federal government introduced separate access and privacy acts in 1983. On the provincial level, all provinces, save Alberta and Prince Edward Island, have freedom of information acts. Four of these – Quebec, Ontario, Saskatchewan and British Columbia – include privacy protection in their legislation. Quebec's new *Civil Code*, when it comes into effect, will extend an individual's right to privacy to the private sector.

Personal Information, Privacy and the Preparation of Priority Briefing Notes at the Ministry of Health

A copy of the report is available from the IPC Communications Department.

IN 1991 THE IPC INVESTIGATED THE DISCLOSURE by a former Minister of Health of an individual's personal information. The IPC's findings were outlined in a report tabled in the Legislative Assembly on June 20, 1991.

Recently, the IPC completed a follow-up to the investigation, reviewing the personal information practices of the Ministry of Health. The IPC report, "Personal Information, Privacy and the Preparation of Priority Briefing Notes at the Ministry of Health" dated July 1992, focused on the procedures the Ministry follows when preparing briefing notes.

It was decided to conduct a review of these procedures because they played a significant role in the events leading to the disclosure by the former Minister. In addition, as briefing notes are central to the flow of information within many ministries, it was felt that the knowledge gained from the review might prove helpful to other government organizations.

The purpose of the IPC review was twofold:
• to identify privacy issues relating to the procedures followed by the Ministry of Health when preparing Minister's briefing notes; and
• to comment on the general level of privacy awareness within the Ministry.

Highlights of The IPC's report include the following recommendations:
• The Ministry of Health's guidelines ("Priority Briefings Guideline Booklet") should be changed to state that, where possible, the identity of individuals involved in contentious issues should be kept anonymous.
• An education program on privacy concerns generally, as well as on the intent and meaning of the *Act's* privacy provisions, should be introduced by the Ministry for all of its employees.
• Senior managers at the Ministry of Health should have compliance with the privacy provisions of the *Act* included as part of their performance contracts.

The IPC identified a need for more privacy awareness within the Ministry of Health, and offered to work with the Ministry to find ways to achieve this objective. In a response to the report by the Deputy Minister the IPC was pleased to learn that the Ministry had already taken steps to increase the level of privacy awareness. Privacy awareness sessions for ministry staff are underway and new workshops are being designed for more intensive privacy training within the Ministry. The IPC commends the Ministry for these actions.

As identified in the IPC report, there is a genuine need for every organization covered by the *Acts* to increase the level of awareness of the privacy protection principles contained within them. The IPC feels that all government organizations should work towards making privacy considerations a part of their corporate culture.

Assistant Commissioner Ann Cavoukian and Compliance Manager John Brans discuss privacy awareness.

Fall Noticeboard

What's up for Fall '92 ... take note!

Upcoming Workshops:

Access & Privacy: Making it Work*
November 9 and 10, 1992
Mariott Hotel (Eaton Centre), Toronto

If you haven't registered yet, don't delay! This year's workshop features a "hands-on" approach to freedom of information and protection of privacy.

* Co-sponsored by:
- Office of the Information and Privacy Commissioner/Ontario
- Freedom of Information and Privacy Branch, Management Board Secretariat
- Association of Municipal Clerks and Treasurers of Ontario

For more information and registration, contact Tom Riley, Riley Information Services, (416) 593-7352.

Electronic Democracy: Cultures, Values and Norms
December 1 & 2, 1992
Ottawa Congress Centre

Information technology is radically changing not only our systems of government and administration, but how we view the world. For further information and registration for this conference, please contact Tom Riley, Tom Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto M5G 2G4; telephone (416) 593-7352; fax (416) 593-0249.

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The IPC has recently released "Caller ID Guidelines" to institutions covered by freedom of information and protection of privacy legislation in Ontario. These guidelines are targeted at government organizations that currently have Caller ID, as well as those contemplating the use of the service. Their purpose is to ensure that the privacy concerns relating to this technology are recognized and considered by government organizations. If you have not received a copy of the guidelines and wish to receive one, please contact the IPC Communications Department at (416) 326-3333 or 1-800-387-0073.

• • • • • •

The IPC has recently made two submissions to the Ontario Telephone Service Commission (OTSC). The first, made in July of this year, addressed call management services. The second, made in September, outlined the IPC's general privacy concerns regarding telecommunications, as well as a strategy for future regulation and policy-making in this area. Anyone wishing to obtain a copy of either submission should contact the IPC Communications Department.

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The IPC recently extended the deadline for submissions to its consultation paper on workplace privacy. The agency is considering responses and will be preparing a report on the subject.

• • • • • •

IPC *Précis* features two new "At A Glance" columns – one for "Highlights of Orders", and one for "Highlights of Compliance Investigations". Designed to give the reader quicker access to required information, they alphabetically list institutions highlighted in each issue, followed by their appropriate order or compliance investigation number(s).

• • • • • •

You will be receiving three issues of IPC *Perspectives* per year – Fall, Winter and Spring/Summer. IPC *Précis* will continue to be distributed quarterly.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I have received orders from the Commissioner in the past and would like to continue to do so. What should I do?*

A: Orders from the Office of the Information and Privacy Commissioner may be obtained through Publications Ontario. In addition to the sale of single copies, it also offers an annual subscription service to any customer who wishes to receive copies of all orders.

For an annual fee of $200 (plus GST), Publications Ontario will forward on a monthly basis, all orders received over a twelve month period (April-March) regardless of volume or individual prices. It sells back issues on an individual basis. Prepayment is required by cheque or money order made payable to the "Treasurer of Ontario". Visa and Mastercard are also accepted. For telephone purchases and inquiries, call (416) 326-5300 or toll free in Ontario, 1-800-668-9938. Personal shopping can be done at the Publications Ontario Bookstore, 880 Bay Street, Toronto, Ontario, M7A 1N8 or by writing to Mail Order at that address.

Provincial Auditor Reports on Computer Security

THE IPC MET WITH REPRESENTATIVES FROM THE Provincial Auditor's office to discuss concerns associated with computer security. They reviewed observations from the Provincial Auditor's 1991 Annual Report that addressed the security of information held by the provincial government.

Report findings indicated that the level of security of information stored on microcomputers was generally unsatisfactory and this was further compounded by the fact that "... staff were generally unaware of the confidential information stored on their microcomputers and diskettes, which required protection under the *Freedom of Information and Protection of Privacy Act*".

Accordingly, the IPC recently contacted both provincial and municipal government institutions to remind them of potential risks to the privacy of personal information stored in computers. Although most institutions strive to ensure the security of personal information in their care, it is clear that data held in computers need special attention.

The following resources can assist institutions in their continued efforts to protect personal privacy:

- Section 42(d) of the provincial *Act*, and section 32(d) of the municipal *Act*, indicate data protection requirements. Also, section 4 of Ontario regulation 516/90 (provincial) and section 3 of Ontario Regulation 517/90 (municipal) under the *Acts* cover security and protection.

- Section 6 of Management Board Secretariat's "Audit Guide" can help when assessing the necessary controls and practices as they pertain to privacy matters.

Customer Service: Focus of Changes to the Appeal Process

CONTINUED FROM PAGE 1

Over the past six months improvements have been introduced into the appeal system. These improvements and the hard work of staff have allowed us to significantly increase our productivity. However, despite increased productivity, the IPC has come to the conclusion that fundamental change is necessary if the agency is to continue to improve client service.

Some of the proposed changes can be introduced immediately. Others require further discussion and consultation. For this reason, the changes will be introduced in phases.

Phase One initiatives were implemented October 1, 1992. They address the short-term goal of eliminating inefficiencies in the current appeal process. Some changes are refinements to existing processes.

The Phase One initiatives include the following:

• Appointment of Inquiry Officers
Two of the most senior and experienced members of the Appeals department have been appointed Inquiry Officers. Holly Big Canoe and Asfaw Seife join the Commissioner and Assistant Commissioner (Access), as officers with order-signing authority.

• Concise Orders
The IPC will continue to streamline and simplify orders.

• Notice of Inquiry
A Notice of Inquiry will replace the Appeals Officer's Report. In response to comments received from institutions and appellants, the Notice will be shorter and more straightforward.

• Completing Long-standing Appeal Files
Long-standing appeals will be transferred to a special team of experienced Appeals Officers for priority treatment. Specific details about the transfers will be provided to all institutions and appellants at the time of the transfer.

• Affidavit Evidence
The use of affidavits has historically proven to be an efficient way of verifying facts and improving the likelihood of early settlement of appeals. Thus, the IPC will be asking institutions to provide affidavit evidence more frequently in cases where factual evidence is required.

• Reducing Time Limits for Receipt of Records
The time limit for the receipt of records from institutions will be reduced so that the appeal process can begin without delay. When necessary, the IPC will issue an "order for the production of records".

• Proper Decision Letters
When a proper decision letter is issued, the appeal process may begin without delay. The IPC will seek the support and co-operation of institutions to provide proper decision letters to ensure that appeals are processed in a timely manner. When necessary, the IPC will issue an "order for a proper decision letter".

Phase Two will begin early in 1993 and will include broad measures to further simplify and streamline the process. An important part of this phase will be a pilot project and consultation with both municipal and provincial institutions and appellants to help refine the new processes. The IPC will keep readers informed about future changes as details become available.

Coming up next issue:
Other provinces – *Perspectives* looks at legislative developments in the areas of access and privacy.

IPC
PERSPECTIVES
is published by the **Office of the Information and Privacy Commissioner**.
If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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VOLUME 2
ISSUE 1
WINTER 1993

TOM WRIGHT, COMMISSIONER

Workshop '92
Access & Privacy: Making It Work

THIS YEAR'S ACCESS AND PRIVACY WORKSHOP, held in Toronto on November 9 and 10, offered hands-on sessions designed to increase skills as well as provide helpful information on the access and privacy field. Over 400 participants gathered to discuss key topics and share ideas with colleagues from a wide range of organizations including municipalities, police forces, school boards, public utility commissions, ministries, community colleges and library boards.

This workshop was co-sponsored by the Office of the Information and Privacy Commissioner/Ontario (IPC), the Freedom of Information and Privacy Branch, Management Board Secretariat (MBS) and the Association of Municipal Clerks and Treasurers of Ontario.

"Access & Privacy: Making It Work" was the workshop theme. Individual panel and round table sessions addressed topics ranging from the electronic office to information and records management and human resource issues. Customer service was also a focus.

At a session chaired by Jan Ruby, Assistant Deputy Minister, Management and Policy Division of MBS, panellists discussed how

CONTINUED ON PAGE 3

Workshop registrants share ideas during "round table" sessions.

B.C.'s Bill 50

The B.C. Act has been influenced by and is similar to Ontario's scheme.

CANADA'S PROVINCES HAVE TAKEN VARYING approaches to freedom of information and protection of privacy legislation. This article briefly describes British Columbia's latest legislative developments in access and privacy. For further details, refer to B.C.'s *Freedom of Information and Protection of Privacy Act* (Bill 50).

B.C.'s Bill 50 received third reading on June 23, 1992. It will come into effect in the fall of 1993 and will apply to records in the custody or control of provincial government bodies. The B.C. government has made public its intention to introduce "a legislative initiative" in the 1993 spring session to cover local government and other public bodies.

The B.C. *Act* has been influenced by and is similar to Ontario's scheme. However, overall, Bill 50 appears to go further than Ontario's legislation in four areas:

- it broadens the amount of information government organizations must release to the public;
- it augments the amount of personal information government institutions must release to individuals to whom the information relates;
- it goes further in protecting the personal privacy of individuals; and
- it gives more independence and authority to the Information and Privacy Commissioner.

The following are a few examples of how B.C.'s legislation differs from Ontario's legislation.

On the access side:
- the exemptions to the right of access in the B.C. statute are more limited in scope than in Ontario's legislation. There are fewer class exemptions and more exemptions where access must be given unless harm to a government organization or a third party can be shown.
- Routine disclosure is encouraged by statute. This means that government organizations have the authority to identify records that the public can access without making a formal access request.

On the privacy side:
- The B.C. legislation provides that disclosure by a public body of an individual's personal information – for use in mailing lists or telephone solicitation – would be an unreasonable invasion of privacy.

For further information, see the IPC paper, "Recent Developments in Canadian Freedom of Information Law – Survey of Canadian Jurisdictions" prepared for the Council on Governmental Ethics Laws (COGEL) last September. A copy may be obtained from the IPC Communications department.

Upcoming Conference

Privacy and Technology – a one day training session
February 22, 1993
Mariott Hotel (Toronto Eaton Centre)

This one day session will review how information technology has changed the ways in which personal information is handled. It will also discuss whether current government laws are sufficient to protect the privacy of individuals.

For further information or registration contact: Tom Riley, Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto, Ontario M5G 2G4; telephone (416) 593-7352; fax: (416) 593-0249.

WORKSHOP '92

CONTINUED FROM
PAGE 1

customer service can be successfully incorporated into the access and privacy field.

Panellist Irwin Glasberg, Director of Appeals at the IPC addressed the IPC's initiatives to streamline the appeal process to meet the needs of the office's two major client groups – appellants and government organizations.

Robin Keirstead, Manager of Corporate Records for the Municipality of Waterloo and Fred Jones, FOIP Co-ordinator at the Ministry of Revenue focused on staff training as the basic ingredient for excellent customer service. As Robin advised, "Customer service means a lot more than responding to requests ... it requires proper staff training". Fred Jones agreed and went on to suggest that "customer service" is not in itself a satisfactory goal. We must reach for "customer satisfaction".

Information and Privacy Commissioner Tom Wright also discussed customer service. The following comments are from Commissioner Wright's keynote address on November 10:

"... if we want to make more significant improvements to customer service and efficiency, I believe that we need to focus on the front end of the process and the role that government organizations can play.

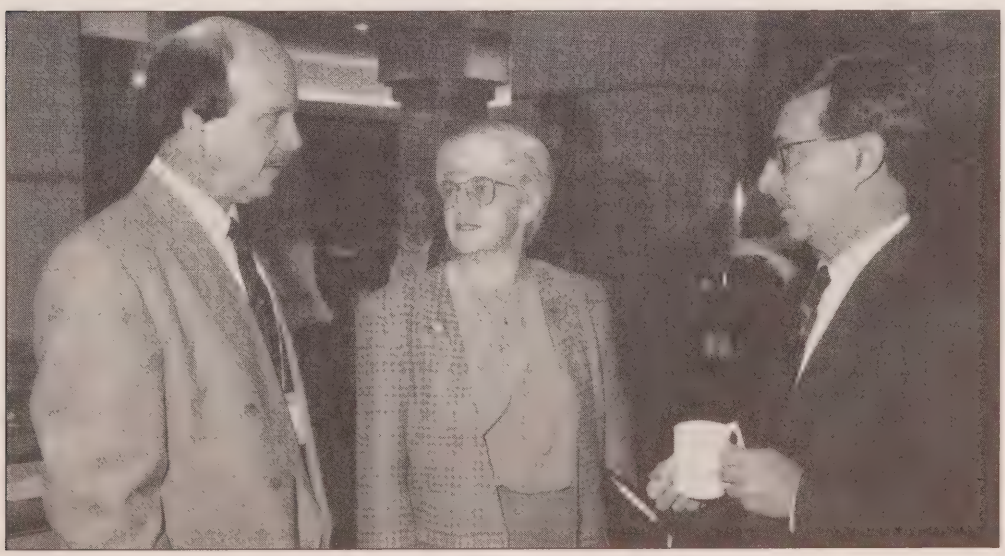
In particular, I continue to encourage the routine disclosure of general records by governments at all levels. This means automatically disclosing information that the public has a right to know – as part of a government organization's regular practice, not just in response to access requests...

If routine disclosure of general records were practised more regularly, the public would not only be better informed but would avoid the request process entirely. In addition to creating greater public satisfaction, routine disclosure would lead to a more open relationship between governments and the publics they serve ...

On the privacy side ... government organizations must work to improve privacy protection before breaches occur. Continuing staff education is essential to ensure that all employees are aware of how the *Acts* relate to their work. Privacy protection measures and considerations need to be incorporated into the daily business practices of government organizations...

Although access and privacy are in their early stages in Ontario, they are developing rapidly. Our challenge is to work to ensure that the fields of access and privacy continue to develop in a manner that respects the rights of the people of this province and protects individual dignity. We need to continually strive to make access and privacy work better. The people of Ontario deserve our continued best efforts." ■

Ruth Grier – Minister of the Environment and Minister responsible for the Greater Toronto Area – opened workshop proceedings.



Discussing workshop highlights are, from left to right: Tom Wright, The Hon. Ruth Grier and Frank White.

The Year 1992 in Review

The following are some of the main events of 1992, as they relate to freedom of information and protection of privacy.

JANUARY – The Ministry of Municipal Affairs releases an "Open Local Government" draft legislation package "designed to enhance accountability and openness of local government."

FEBRUARY 27 – The federal government announces plans to merge the federal information and privacy offices.

MARCH 29 – Ontario's Information and Privacy Commissioner Tom Wright discusses access and privacy at the "B.C. FOI and Privacy Week" conference.

APRIL 1 – Saskatchewan proclaims Bill 70, *The Freedom of Information and Protection of Privacy Act* in force.

MAY 6 – A CRTC decision requires phone companies to provide "per call automated blocking free of charge" to those subscribers who request it.

MAY 27 – Federal Privacy Commissioner Bruce Phillips releases a report entitled "Genetic Testing and Privacy".

JUNE 23 – British Columbia's *Freedom of Information and Protection of Privacy Act* receives third reading.

JUNE 30 – Federal Communications Minister Perrin Beatty unveils draft plans to protect consumer privacy in the area of telecommunications goods and services.

JULY – The IPC makes a submission to the Ontario Telephone Service Commission (OTSC) addressing call management services.

AUGUST 21 – An Ontario Court judge rules that under the municipal *Act*, a list of names of welfare recipients should not be released to a local council.

SEPTEMBER – The IPC makes a submission to the Ontario Law Reform Commission on genetic testing.

SEPTEMBER – The IPC makes a submission to the OTSC entitled "Privacy and Telecommunications".

SEPTEMBER – The Ontario Law Reform Commission releases its report on drug and alcohol testing in the workplace.

SEPTEMBER 21 – The IPC releases "Submission on Privacy and Telecommunications – Discussion Paper and Proposed Principles" to the Federal Department of Communications.

OCTOBER 27 - 29 – Information and Privacy Commissioner Tom Wright makes a presentation at the 14th International Data Protection & Privacy Commissioners Conference in Sydney, Australia.

NOVEMBER – La Commission d'accès à l'information du Québec rules that unless a crime is being committed, police surveillance through videotaping pedestrians is not authorized under Quebec's FOIP legislation.

NOVEMBER 19 – The Federal Court of Canada rules that the government did not have reasonable grounds to withhold disclosure of government commissioned public opinion polls on national unity and constitutional reform.

DECEMBER 7 – In the IPC annual report, Commissioner Wright calls on the Ontario government to introduce amendments to the provincial *Act* recommended by the Standing Committee on the Legislative Assembly after its three-year review of the legislation.

Verbatim Reporters

A practical resource for government organizations.

THE IPC HAS RECENTLY UPDATED ITS GUIDELINES on the use of "Verbatim Reporters at Administrative Hearings". After surveying the use of verbatim reporters by government organizations, the IPC concluded that the original guidelines, issued in April 1991, should be updated to include the following recommendations. Government organizations should:

- develop internal policies and procedures to ensure that privacy considerations are addressed;

- have formal contracts or agreements with the reporting services they use; and

- conduct an on-site visit to reporting services prior to entering into an agreement. They should follow-up with visits at reasonable intervals to ensure that the reporting service is complying with the terms of the agreement.

A number of government organizations use the services of verbatim reporters to record proceedings of administrative hearings and inquiries. The records generated by these verbatim reporters may contain personal information, and consequently may fall under the privacy provisions of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act.*

The guidelines are a practical resource to assist government organizations in addressing privacy issues. A copy may be requested from the IPC Communications department.

Telecommunications Initiatives

LAST SUMMER, THE ADVISORY COMMITTEE ON A Telecommunications Strategy for the Province of Ontario submitted its report to the Minister of Culture and Communications. In a recent letter to the Minister of Culture and Communications, the IPC commended the efforts of the Advisory Committee for preparing a framework for new initiatives in the area of telecommunications.

The IPC is particularly pleased to see that the Advisory Committee's Report contains a recommendation that guidelines be developed to enhance the protection of personal privacy in the face of the new technologies. This is particularly relevant with regard to the European Commission's Directive on Data Protection. When this comes into effect it may prevent the transfer of information from EC countries to countries where data protection standards are not "adequate".

The IPC believes the Advisory Committee must consider the significant impact of the implementation of a telecommunications strategy on access to information and the protection of privacy.

Anyone who wishes a copy of the Advisory Committee's report may contact the Ministry of Culture and Communications at 77 Bloor Street West, 6th floor, Toronto, Ontario M7A 2R9; telephone (416) 326-9600.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I represent a local school board and would like to know whether I should release a record.*

A: The Freedom of Information Branch at Management Board Secretariat can provide you with the assistance you need. Simply contact a policy advisor at the FOI branch. The branch helps organizations that are covered by the *Acts* by providing training, legal, policy and operational advice.

The Freedom of Information Branch may be contacted at:

56 Wellesley Street West
18th Floor
Toronto, Ontario
M7A 1Z6

phone: (416) 327-2187
fax: (416) 327-2190

IPC Summary of Statistics

TO KEEP READERS INFORMED ON THE VOLUME of appeals and compliance investigations processed each quarter, the IPC is publishing relevant statistics in each issue of *IPC Précis*. For your convenience, *Perspectives* presents the following breakdown:

Summary of Appeal-related Statistics, January 1 - September 30, 1992

At the end of the third quarter, a total of 855 active appeal files were opened – 505 provincial files, and 350 municipal files. For the same time period, a total of 826 active appeal files were closed – 517 provincial files, and 309 municipal files.

Of the 517 provincial appeal files closed, 103 were resolved by order and 414 were resolved by a method other than by order. Of the 309 municipal appeal files closed, 42 were closed by order and 267 were closed other than by order.

Summary of Compliance Investigation Statistics, January 1 - September 30, 1992

At the end of the third quarter, a total of 130 compliance investigation files were opened – 61 provincial files, and 69 municipal files. For the same time period, a total of 158 compliance investigation files were closed – 81 provincial files, and 77 municipal files.

IPC
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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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VOLUME 2
ISSUE 2
SPRING 1993

TOM WRIGHT, COMMISSIONER

Privacy Initiatives

GOVERNMENT ORGANIZATIONS COVERED BY BOTH the provincial and municipal Acts take care to protect the personal information in their custody or control. In fact, there are many initiatives being taken in the area of privacy protection – by both government and the private sector. The IPC commends such initiatives and this issue of *Perspectives* presents a number of them for your interest.

Computer Matching

At the time of the three-year review of the provincial *Act*, the IPC recommended that a task force be created to examine the use of data matching and its associated privacy concerns.

Accordingly, the senior management committee at Management Board Secretariat is reviewing terms of reference for an initiative to develop guidelines for the computer matching of personal information.

Consumer Privacy

New privacy guidelines released by the Canadian Direct Marketing Association (CDMA) give consumers more control over the collection and use of their personal information.

Consumers already have the power to stop unwanted telephone or mail solicitations from any direct marketer that is a CDMA member.

CONTINUED ON PAGE 6

Delegates from Quebec's meeting of information and privacy commissioners take a moment to relax.

OTSC Order Sets Privacy Example

Order 5929 provides significant options for independent telephone systems customers who wish to protect their privacy through the blocking of Caller ID.

On December 2, 1992 the Ontario Telephone Service Commission (OTSC) issued Order 5929 regarding Call Management Services (CMS). The IPC believes this Order offers significant privacy options to customers of OTSC regulated phone systems.

The OTSC is a provincial regulatory body that issues orders and directions necessary for the regulation of 30 independent telephone systems in Ontario. Independent telephone systems service approximately 217,281 access lines, with their customers representing about four per cent of the population. CMS is comprised of a set of four telecommunications services including Call Trace, Call Screen, Call Return and Call Display (Caller ID).

Order 5929 provides significant options for independent telephone systems customers who wish to protect their privacy through the blocking of Caller ID. Caller ID provides for the display on specialized equipment of a caller's phone number to anyone who subscribes to the service. As this raises a number of privacy concerns, the IPC was heartened with the OTSC's stance on the issue.

In April 1992, the OTSC began proceedings to review issues relating to privacy and telecommunications. In response, the IPC made two submissions to the OTSC; the first in April 1992 addressing CMS; the second in September 1992 outlining general privacy concerns in relation to telecommunications.

Highlights of the IPC's April submission included the following recommendations:

- free per call blocking should be offered to all telephone users;
- per line blocking should be offered, free of charge, upon request for women's shelters, transition houses and victims of abuse residing outside of shelters;
- Call Return should be implemented only if the display of blocked telephone numbers is not permitted; and
- Call Trace should be universally available to all telephone users free of charge or with a minimal per activation charge.

Order 5929 incorporates all of the recommendations contained in the IPC's submission. In addition, with regard to free per line blocking of Call Display, the OTSC Order goes beyond the IPC recommendation in making this service available on request to all telephone system customers, rather than just to women's shelters and victims of abuse.

The OTSC also goes on to direct independent telephone systems under the jurisdiction of the municipal *Act* to file an opinion of a solicitor certifying compliance with the *Act* when applying for approval of tariffs for Caller ID or Call Return.

Matters relating to the IPC's second submission to the OTSC – on the topic of privacy and telecommunications – will be addressed in a subsequent order of the OTSC.

For further information contact: Paul Vlahos at the OTSC; 3625 Dufferin Street, Ste.200, Downsview, Ontario, M3K 1Z2; (416) 235-4950.

IPC Changes

Tom Mitchinson has accepted an 18-month secondment with the Ministry of the Attorney General as Executive Director for the Office of the Chief Judge of the Ontario Court of Justice (Provincial Division). During this time, Irwin Glasberg has agreed to serve as Assistant Commissioner (Access) and Ken Anderson has accepted the position of Director of Appeals. Tom, Irwin and Ken all bring extensive experience to their new appointments.

New Goal for Privacy Investigations

WITH A VIEW TO IMPROVED CUSTOMER SERVICE, the IPC's Compliance department has set a new goal. By the end of 1993, the department intends to resolve the majority of privacy complaints within four months. The following changes to the investigation process have been initiated to meet this goal.

• Where the IPC has enough information, a new "Notice and Request for Information" letter will request the organization to respond to specific questions at the initial stage of the investigation. Otherwise, the initial compliance notice will inform the government organization of a privacy complaint, and will also include as many details as possible about the complaint, to enable the organization to look into the matter right away.

• Where possible, investigators will try to resolve complaints to the mutual satisfaction of the complainant and the government organization, through early discussion and negotiation, rather than through the formal investigation process.

• When complainants and government organizations are asked to respond to a Compliance Investigator's inquiries, they will always be given a response date. If no response is received by that date, the investigator will proceed with the investigation in order to keep the investigation progressing at a steady pace.

• Where an investigation is conducted, all parties will be given the opportunity to note any factual errors or omissions in the draft investigation report by a set date. It will no longer be necessary to comment on the entire report, only errors or omissions. If no response is received by the date provided, a final report will be issued.

IPC efforts to streamline and simplify investigation reports will continue on an ongoing basis, as will efforts to improve service to the public.

Smooth transition at the IPC. From left to right: Ken Anderson, Irwin Glasberg and Tom Mitchinson.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I read summaries of orders in* IPC Précis, *but currently need to read a complete order. How can I get a full-text order ?*

A: Publications Ontario distributes all full-text orders. They have enhanced their distribution service as follows:

• If you have an urgent request, Publications Ontario will arrange to have an order sent by courier at your expense. You will receive the order within two working days.

• Regular requests for individual orders will be mailed out within 10 working days.

• Publications Ontario makes subscriptions of all orders available at an annual cost of $250 plus GST. At the end of each month they will mail subscribers all the orders issued that month.

If you have any further questions about the distribution of IPC orders, please contact Julie Andradi at Publications Ontario in Toronto. You may call (416) 326-5312 or 1-800-668-9938. Personal shopping can be done at the Publications Ontario Bookstore, 880 Bay Street, Toronto, Ontario, M7A 1N8.

Spring Noticeboard

FYI - In February, Paul-André Comeau of the Quebec Access to Information Commission hosted the third meeting of information and privacy commissioners. Key issues in access and privacy were discussed by commissioners and representatives from Saskatchewan, Ontario and Quebec. Other delegates included the federal Information and Privacy Commissioners as well as an official from the Alberta government.

* * *

The IPC recently distributed revised guidelines on the use of Caller ID. If you would like a copy of "Caller ID Guidelines" contact the IPC Communications department at (416) 326-3333 or 1-800-387-0073.

* * *

Many applications of smart card technology involve the collection, retention, use and disclosure of personal information.

Accordingly, the IPC is working on a "smart card" background paper that will discuss the technology, its various applications and privacy concerns. The paper will be available later this year.

* * *

Thanks to everyone who helped make the 1992 fall workshop "Access & Privacy: Making It Work" a success. To ensure the next workshop will be as productive, share your ideas with Gayle Martin at the Office of the Information and Privacy Commissioner, 80 Bloor Street West, Suite 1700, Toronto M5S 2V1; (416) 326-3333, or 1-800-387-0073.

* * *

Pathways for Services in the Electronic Village
June 14 and 15, 1993 - Ottawa Congress Centre

For further information on this two day conference, contact Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto, M5G 2G4; telephone (416) 593-7352; facsimile (416) 593-0249.

DELETE

THIS

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Jones Report in B.C.

An update on freedom of information and protection of privacy in B.C.

ON FEBRUARY 1, MLA BARRY JONES RELEASED a report calling for the extension of freedom of information and privacy legislation in British Columbia to cover public sector bodies outside the provincial government.

Jones, a member of the B.C. Cabinet-Caucus Committee on Information and Privacy, was asked last September to prepare a report for the committee.

The report recommends that B.C. extend freedom of information and privacy legislation to include local bodies plus specific professional organizations. This would include municipalities, school boards, hospital boards, police boards, universities, colleges and self-governing professional bodies such as the Law Society of British Columbia and the College of Physicians and Surgeons.

The report contains more than 40 recommendations, including one that suggests individuals should have a legislated right of access to their own health care records, including records held by hospitals or in doctors' offices.

The B.C. Cabinet-Caucus Committee on Information and Privacy is considering the Jones report. The Committee intends to recommend legislation during the Spring 1993 session.

Quebec's Bill 68

Extension of data protection to the private sector.

QUEBEC HAS TAKEN A GIANT STEP FORWARD IN the area of privacy protection. As of December 16, 1992, the province became the first jurisdiction in North America to propose the extension of data protection to the private sector.

The object of the Bill is to ensure respect for the confidentiality of personal information held by a person operating a business in Quebec. Where Quebec's new *Civil Code* set out rights for the protection of personal information, Bill 68 establishes rules for the exercise of these rights.

For example, Article 35 of the *Civil Code* provides an individual with "a right to the respect of his reputation and privacy". Bill 68 regulates how and when personal information can be collected, held, used or disclosed in the course of running a business in Quebec.

The Bill also provides legal recourse for individuals who feel their privacy has been compromised by a business; and it sets out penalties for failure to observe the provisions of the Bill.

If an individual has a complaint regarding how his or her personal information was handled, he or she may complain to *la Commission d'accès à l'information* (the Commission). The Commission can make any order it considers appropriate to protect the rights of all concerned.

Privacy Initiatives
CONTINUED FROM
PAGE 1

This option will be extended by privacy provisions of the CDMA's new privacy code. The association's new code gives people the right to purchase from a direct marketer without having information about that transaction shared with another marketer. To stop the transfer of information, all consumers will have to do is check the appropriate box on material received from CDMA members.

The CDMA's privacy code ensures:

• the right to have one's name removed from individual company marketing lists.

• the right to have one's name removed from marketing lists before those lists are transferred to other marketers.

• the right to correct one's own personal information.

The Canadian Direct Marketing Association is a national, non-profit association. For further information, contact Scott McClellan at the CDMA; 1 Concorde Gate, Suite 607, Don Mills, Ontario M3C 3N6; (416) 391-2362.

Cellular Telephones

Many cellular telephone users think they are getting the same level of privacy as they would on their regular telephones. However, as cellular telephones work on radio waves, calls can be easily listened to or taped. The federal government has attempted to protect cellular telephone users by introducing a number of legislative amendments to the Criminal Code that will enhance communications privacy over radio-based (cellular) telephone services by:

• deeming an encrypted cellular telephone call to be private;

• prohibiting the interception of cellular telephone calls for malicious gain; and

• prohibiting the disclosure or other use of information obtained from the interception of communications between any remote unit primarily used for radio-based telephone communications and a base station.

For further information on the federal amendments introduced in December 1992, contact Fred Bobiasz, Criminal Law - Policy Section, Department of Justice, Justice Building, Ottawa K1A 0H8; (613) 957-4733.

Privacy Survey

Equifax Canada, has recently completed the first Canadian survey on consumers' attitudes on privacy entitled "The Equifax Canada Report on Consumers and Privacy in the Information Age". The survey was commissioned by Equifax Canada to obtain an objective appreciation of the views held by Canadian consumers and business leaders on some of the most prominent issues relating to use of consumer services and issues of personal privacy in Canada today. Some of the survey's most significant findings indicate that a majority of Canadians are:

• concerned about threats to their personal privacy;

• concerned about the accuracy of personal information that may be collected and disseminated; and

• unfamiliar with how the information industry operates.

Equifax Canada provides credit-related information to financial organizations. For more information, contact Equifax Canada Inc., 7171 Jean Talon St. East, Ville D'Anjou, Quebec, H1M 3N2; (514) 493-2470 ■

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IPC
PERSPECTIVES
INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

TOM WRIGHT, COMMISSIONER

Workplace Privacy

As part of its mandate, the Office of the Information and Privacy Commissioner researches and comments on access and privacy issues which may have implications for government organizations and the broader community. Over the past decade there has been a growing awareness of the need to deal with workplace privacy issues. Accordingly, we have recently focused on the matter in a paper entitled *Workplace Privacy: The Need for a Safety-Net.* In this paper, we present our position on surveillance and electronic monitoring, as well as privacy issues in employee testing and the potential for misuse of employment records in the workplace.

Every person working in Ontario is affected by the issues raised in the paper. The ever-growing capabilities of technology increase the potential for the electronic collection, storage and use of personal information. Consequently, they provide greater third party access to employee information. A significant

CONTINUED ON PAGE 3

Commissioner Tom Wright hosts David Flaherty (left), appointed in July 1993, as British Columbia's first Commissioner for freedom of information and protection of privacy.

Book Review

McNairn and Woodbury also include some useful tools for finding one's way around the legislation ...

McNAIRN & WOODBURY'S SECOND PUBLICATION on access and privacy law in Canada, "The Annotated Ontario Freedom of Information and Protection of Privacy Acts 1993", is a comprehensive annotation of the provincial and municipal *Acts*.

The annotations for each section, which cover IPC orders up to September 1992, are organized under four main headings: "Commentary", "Commissioner's Orders", "Related Provisions", and "Municipal Information and Privacy Act". [The authors also provide relevant references to their previous text on access and privacy, "Government Information - Access and Privacy".]

Under "Commentary", the authors provide a concise description of each section. Those unfamiliar with the legislation are likely to find these descriptions very useful, particularly for relatively complex sections such as section 21 of the provincial *Act*, and for the Parts of the *Acts* relating to protection of privacy for which there are no orders from the Commissioner.

Under "Commissioner's Orders", the authors summarize the essence of important orders. The summaries are brief and informative. For example, in the annotation to section 2(1) of the provincial *Act* dealing with the definition of "personal information", the authors cite Order 113 and state:

> *The name and title of a person writing in an official organizational capacity are not personal information. The views expressed are not personal views nor are the issues addressed personal issues.*

References to orders made under the municipal *Act* are located in the annotations of the corresponding provincial sections. Thus Order M-29, which deals with the definition of "trade secret" in section 10 of the municipal *Act*, is contained in the annotation of section 17 of the provincial *Act*.

Under "Related Provisions", the authors provide a handy cross-reference to related provisions in the *Acts*. For example, in the annotation of section 41 of the provincial *Act*, which deals with use of personal information in the control of an institution, the authors refer to the orders under section 10 of the *Act* which discuss the meaning of "control".

Finally, under "Municipal Information and Privacy Act", the authors discuss, for each section, the similarities and differences of the provincial and municipal *Acts*. This section is particularly useful for sections which contain important differences in wording, such as the definition of "head" in section 2(1) of the *Acts*.

McNairn and Woodbury also include some useful tools for finding one's way around the legislation: a table of concordance which cross-references the section numbers of the provincial and municipal *Acts*, and a detailed index. The authors have also included the full text of the municipal *Act* and the Regulations made under both *Acts*.

Readers of "The Annotated Ontario Freedom of Information and Protection of Privacy Acts 1993", will find it a useful, comprehensive summary of access and privacy law in Ontario .

Workplace Privacy

CONTINUED FROM
PAGE 1

result of such access is that it will become more difficult, and also more important, to ensure the protection of employees' privacy in the workplace.

Currently, some of the most common forms of employee surveillance techniques include: visual surveillance devices, such as closed circuit television systems; telephone surveillance, in the form of call management systems and service observation; and computer-based monitoring used to collect performance data from employees working on computers.

Surveillance of employees through electronic monitoring in the workplace is the daily reality for hundreds of thousands of Canadian employees. Although there are viable reasons why a business might collect and use personal information about its employees – such as the need to ensure safety or improve business operations – it is the potential for inappropriate uses of such technology that governments should address.

Our research has determined that some limited measures have already been taken to regulate telephone monitoring, the use of lie detector tests, drug testing, and the misuse of employment records. However, it is evident these measures are disparate and piecemeal. The advanced technologies used in areas such as computer monitoring and genetic testing do not, as yet, have any form of government regulation.

The rapidly expanding availability of invasive technologies which can be used in the workplace dictates an urgency for action and change. Globally, legislative responses to evolving technologies and their applications are in a formative phase. In Ontario, although some provisions for the protection of employees' privacy do exist, it is necessary to expand these and to look ahead to ensure that future generations of employees work in environments which respect the individual's right to privacy.

The challenge is to develop timely policies that maximize the benefits of new technology while ensuring an individual's protection of privacy. Therefore, we are recommending that the Ontario government conduct a thorough province-wide, multi-sector consultation followed by the introduction of workplace legislation. The outcome must be the best long-term results for all concerned – employees, government, business and society.

Tom Wright
Commissioner

A copy of *Workplace Privacy: The Need for a Safety-Net* may be obtained from the IPC Communications department.

Staff from the IPC's Appeals and Compliance departments made a series of presentations to Commissioner Flaherty during his visit.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC

Q: *Why aren't all the Commissioner's orders summarized in IPC Précis?*

A: All orders are highlighted in *IPC Précis.* However, only certain orders include textual summaries.

Every order is listed with the date, institution, appeal number, decision maker and "keywords". This information allows you to decide whether you want to purchase the full-text order from Publications Ontario.

Précis includes textual summaries for those orders that discuss new issues; contain new interpretations; or cover issues that the IPC feels should be reinforced for government organizations.

If you wish to quickly locate the issue of Précis in which specific orders and compliance investigation reports have been highlighted, you may refer to the *Directory to IPC Précis.*

(See New Research Tool, p. 6)

IPC Summary of Statistics

Appeal-related statistics, January 1 to June 30, 1993.

At the end of the second quarter, a total of 568 active appeal files were opened – 293 provincial files, and 275 municipal files. For the same time period, a total of 673 active appeal files were closed – 379 provincial files, and 294 municipal files.

Of the 379 provincial appeal files closed, 28 per cent were resolved by order and 72 per cent were resolved by a method other than by order. Of the 294 municipal appeal files closed, 30 per cent were closed by order and 70 per cent were closed other than by order.

Compliance investigation statistics, January 1 to June 30, 1993.

At the end of the second quarter, a total of 91 compliance investigation files were opened. Of these, 56 were provincial files, and 30 were municipal files*. For the same time period, a total of 108 compliance investigation files were closed – 55 provincial, and 48 municipal*.

* The remainder were non-jurisdictional.

News from the front —

HOME ADDRESSES ARE NO LONGER ROUTINELY disclosed by the Ministry of Transportation when they receive information requests. After deliberation with the IPC and various stakeholders, the Ministry of Transportation agreed to implement a number of changes to reduce access to the information contained in their driver and vehicle databases.

Home addresses are now available on a limited and specific basis. Individuals can now obtain the address of others only for the purposes of identification for the "administration of justice", such as locating the owner of an illegally parked car; locating the parties in or witnesses of a collision; or filing a claim in Small Claims Court. Organizations can obtain addresses for purposes such as identification and location for the administration of justice, automobile insurance, motor vehicle safety recall and statistical research.

The Ministry's new administrative procedures appear to have made an impact. Preliminary findings show a reduction in the processing of special requests for address information.

B.C. Commissioner visits IPC

THE IPC RECENTLY PLAYED HOST TO DAVID Flaherty, appointed in July 1993 as British Columbia's first Commissioner for freedom of information and protection of privacy. He was at the IPC to learn more about how the Ontario system works in processing appeals and compliance investigations.

As has been reported in previous issues of *Perspectives*, B.C.'s new *Freedom of Information and Protection of Privacy Act* has a number of similarities to Ontario's provincial and municipal *Acts*. Staff from the IPC's Appeals and Compliance departments made a series of presentations to Commissioner Flaherty during his visit, addressing how the IPC is fulfilling its legislative mandate and serving our customers in processing appeals and compliance investigations.

Commissioner Flaherty felt he could obtain valuable insights from the IPC because we have almost six years experience with Ontario's provincial *Act*, and nearly three years working with the municipal *Act*. His visit also included sessions with Ontario's Commissioner Tom Wright, and Assistant Commissioners Ann Cavoukian and Irwin Glasberg, discussing access and privacy issues being addressed in Ontario and British Columbia.

Formerly professor of history and law at the University of Western Ontario, Commissioner Flaherty began his six-year term immediately upon his appointment. As Commissioner, he will be responsible for upholding the public's rights of access to general information held by governments, and the protection of privacy of personal information, held in government files. The B.C. legislation, which will eventually cover all provincial and local government organizations across the province, came into effect October 1 of this year.

B.C. Commissioner Flaherty's visit included sessions with Ontario's Assistant Commissioners Ann Cavoukian (left) and Irwin Glasberg (right).

Fall Noticeboard

Share your IPC materials!
The IPC is committed to providing timely information in *Perspectives*, *Précis* and other agency publications. This will continue through regular mailings, although only single copies of any publication will be available to those on our mailing list. So from now on, we ask that you share or photocopy items of interest for your colleagues.

Take Note
The IPC is pleased to announce that full-text compliance investigation reports are now available through Publications Ontario. Reports (released on or after June 1, 1993) may be ordered by writing: Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8. For your convenience, highlights of significant reports and orders will continue to be published in *IPC Précis*.

New Research Tool
To help you find summarized decisions from the Office of the Information and Privacy Commissioner, you may now refer to the new *Directory to Précis*. This new publication catalogues both the orders and compliance investigations that have been highlighted in *IPC Précis* and will be updated annually. If you have not already received a copy of the new directory and wish to receive one, call Jennifer at the IPC Communications department. In Toronto, call (416) 326-3952; Ontario residents may call 1-800-387-0073.

IPC Reference Library
Research into access and privacy matters can be demanding; so much information and so little time. There could be a half-dozen places where answers might be found.

The IPC can help make this task a little easier. Its reference library is open to visitors from 9 a.m. to 5 p.m., Monday through Friday. The library includes general Canadian, American and overseas access and privacy texts, articles and legislation; as well as IPC publications and orders.

To arrange a visit, call or write the IPC Legal department Secretary at 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1; (416) 326-3924 or 1-800-387-0073.

Legal Aid Adopts FOI Policy —
In order to provide a framework for dealing with the increasing volume and complexity of information requests, the Law Society of Upper Canada's Ontario Legal Aid Plan recently adopted a formal freedom of information policy. With guidance from the IPC, the Ontario Legal Aid Plan has developed a policy that presents basic principles for access and privacy, along with a brief explanatory text.

One of the guidelines stipulates that there should be a right of access by individuals to information about themselves, subject only to clear and specific exemptions. The policy also provides for a right to appeal all decisions concerning requests handled by area directors and the provincial office. Appeals will be heard by the Deputy Director, Appeals, for the Ontario Legal Aid Plan.

A copy of the policy can be obtained by contacting the Ontario Legal Aid Plan at (416) 979-1446 ■

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

TOM WRIGHT, COMMISSIONER

New Attitudes & Expectations

"THE PEOPLE OF ONTARIO HAVE NEW attitudes and expectations – for privacy protection, information access and cost effectiveness". So advised Tom Wright, Ontario's Information and Privacy Commissioner at the annual access and privacy workshop held in Toronto on October 25 and 26, 1993.

"The purpose of this workshop is to help turn these new expectations into realities", said Mr. Wright.

Jointly sponsored by the Office of the Information and Privacy Commissioner/ Ontario; Freedom of Information and Privacy Branch, Management Board Secretariat; and the Association of Municipal Clerks and Treasurers of Ontario, the workshop offered an opportunity for over 200 participants to discuss access and privacy interests.

During his keynote address, Commissioner Wright considered the evidence of growing public concern over privacy issues.

"A year ago Ekos Research Associates Inc. conducted a comprehensive national privacy survey on behalf of several federal agencies

CONTINUED ON PAGE 6

Idea-sharing at Workshop '93. From left to right: Laura Bradbury, Chair, Social Assistance Review Board; Margaret Rodrigues, Commissioner of Corporate Services, City of Mississauga; Michele Noble, Deputy Solicitor General and Deputy Minister of Correctional Services, Ministry of Solicitor General and Correctional Services; and Tom Wright, Information and Privacy Commissioner/ Ontario.

Tom Wright Comments

"Health care information is probably the most sensitive kind of information that can be collected about an individual. Inappropriate release of such information can have devastating consequences to the person involved".

With this in mind, Commissioner Tom Wright recently addressed both the Standing Committee on Public Accounts, and the Standing Committee on Administration of Justice.

To the Standing Committee on Public Accounts, Commissioner Wright stressed the need for legislation concerning the gathering and managing of personal health information. The Commissioner placed the onus directly on government to protect the privacy of individuals. He recommended the Standing Committees be part of the solution:

"Any system that relies on accurate and up-to-date personal information in order to function effectively must take the principles in the *Code* [of fair information practices] into consideration at the earliest possible stage – at the beginning, when the system is being designed".

To the Standing Committee on Administration of Justice, Commissioner Wright addressed his particular concerns about Bill 89.

Bill 89 would allow emergency-care givers access, upon request, to personal health information about the individuals they assist. Unfortunately, the Bill does not require emergency-care givers to maintain confidentiality of any information they receive. The Commissioner indicated that this potential for privacy invasion must be addressed by the Standing Committee.

Commissioner Wright submitted that "... confidentiality can best be maintained if the disclosure of sensitive health information proposed in Bill 89 does not take place". He also indicated that the Office of the Information and Privacy Commissioner has, for some time, been calling for legislation relating to personal information contained in medical records.

Tom Wright left the Standing Committees with one main message – government legislation must support the privacy rights of all Ontario individuals.

Q & A is a regular column featuring topical questions directed to the IPC.

Q&A

Q: *Can I get a list of the free IPC publications available to the public ?*

A: Yes! While you are probably familiar with *IPC Perspectives* and *IPC Précis*, there are a number of other publications you might find very helpful. They include: brochures and pocket guides, as well as background and policy papers.

For your information, we are enclosing a complete list of free IPC publications in January's mailing package. If you need further assistance, please contact Jennifer in the IPC Communications department in Toronto at (416) 326-3952 or 1-800-387-0073.

Q: *Do I need to make a formal request under the* Freedom of Information and Protection of Privacy Act (*the* Act) *to access court transcripts?*

A: No. It is not necessary to make a request under the *Act*. Simply contact the Court Reporter/Court House where the proceeding was held and give the date and room in which the hearing took place.

Winter Noticeboard

Access made easier!

We are making it easier to find out about your access and privacy rights. The IPC has just installed a text telephone, or TTY (also known as TDD), so that deaf and hard of hearing people can communicate directly with our office.

The TTY allows for two-way conversations between callers. Words are not spoken but flash across screens at either end of the telephone line. In this way, we hope to make it easier for our deaf and hard of hearing customers to reach us.

TTY users can call us at 416-325-7539.

Workplace Privacy

"Unchecked technological development is becoming a major threat to personal privacy in the workplace. Today, through electronic monitoring, drug and genetic testing and the perusing of non-work related personnel records, employers can probe more deeply into their staff's off-the-job activities and this can have devastating consequences for employees". So warns Information and Privacy Commissioner Tom Wright, in a recently released report called *Workplace Privacy: The Need for a Safety-Net.*

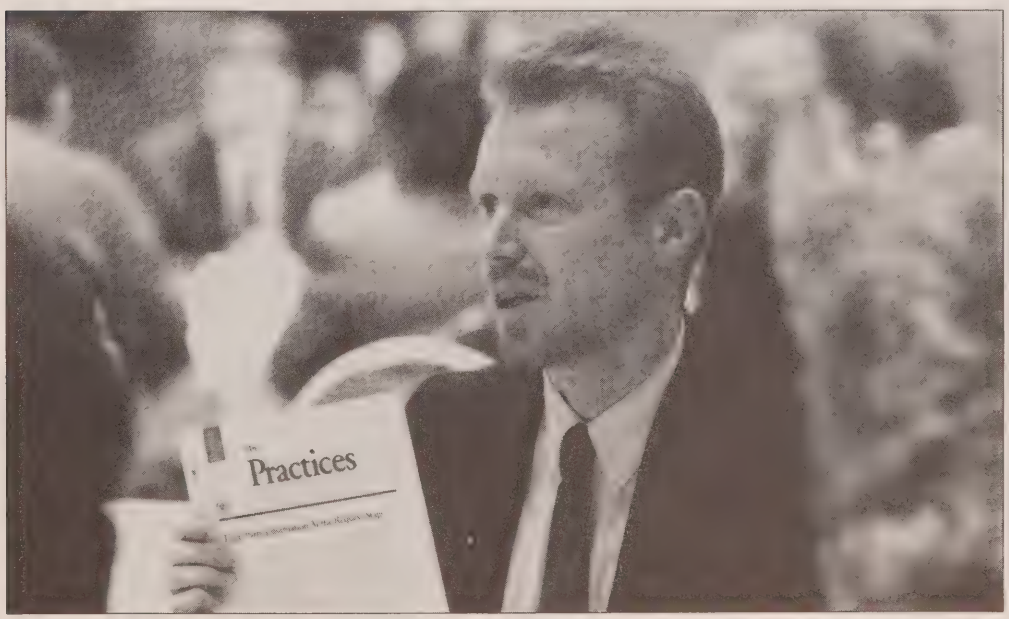
A copy of the report, also available in French, can be obtained through the IPC Communications department. Simply contact Jennifer in Toronto at 416-326-3952 or 1-800-387-0073.

Three-Year Review of the Municipal *Act*

Has it been three years, already? Yes, the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal *Act*) came into effect January 1, 1991, and it's now time to start the process known as "the three-year review".

The Standing Committee on the Legislative Assembly is undertaking this review of the municipal *Act.* Once the study is complete, the Standing Committee will make recommendations to the Legislative Assembly regarding amendments to the municipal legislation.

If you want any further information, please contact: Lisa Freedman, Clerk of the Committee; Room 1405, Whitney Block, Queen's Park, Toronto, Ontario M7A 1A2; telephone 416-325-3528.



IPC Appeals Supervisor John Higgins leads round table discussion,"Developing FOIP Policies".

1993 - The Year in Review

The following are some of the main events of 1993, as they relate to freedom of information and protection of privacy.

JANUARY
The IPC releases updated "Guidelines on the use of Verbatim Reporters at Administrative Hearings".

JANUARY 19
The Canadian Direct Marketing Association releases privacy guidelines to give consumers more control over the collection and use of their personal information.

JANUARY 19
Equifax Canada releases the first Canadian survey on consumers' attitudes to privacy entitled: "The Equifax Canada Report on Consumers and Privacy in the Information Age".

JANUARY 21
The IPC releases "Caller ID Guidelines".

FEBRUARY
Quebec hosts the third annual meeting of information and privacy commissioners.

FEBRUARY 1
The Jones Report is released in British Columbia. It recommends B.C.'s freedom of information and privacy legislation extend to public sector bodies outside the provincial government.

APRIL
The IPC releases a comprehensive paper on "smart cards".

APRIL 26
The Alberta government introduces Bill 1, the province's first access to information legislation.

MAY 26
Commissioner Tom Wright discusses recent trends and developments in the area of freedom of information and protection of privacy at a seminar held by the Canadian Bar Association - Ontario.

JUNE 15
The IPC tables its 1992 Annual Report.

JUNE 15
The National Assembly in Quebec passes Bill 68, the *Act Respecting the Protection of Personal Information in the Private Sector.*

JULY 13
David Flaherty is appointed British Columbia's first information and privacy Commissioner.

SEPTEMBER
Full text compliance investigation reports issued on or after June 1, 1993 become available to the public through Publications Ontario.

SEPTEMBER 14
Commissioner Tom Wright addresses the Standing Committee on Public Accounts about the gathering and management of personal health information.

OCTOBER
The IPC introduces *Directory to Précis,* a new publication that catalogues orders and compliance investigations that have been highlighted in *IPC Précis.*

OCTOBER 4
British Columbia's *Freedom of Information and Protection of Privacy Act* comes into effect covering all provincial government ministries and over 200 agencies, boards and commissions.

OCTOBER 26
Commissioner Tom Wright addresses the Standing Committee on Administration of Justice about the privacy implications of Bill

1993 In Review

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89 for persons with reportable diseases or an agent of a communicable disease.

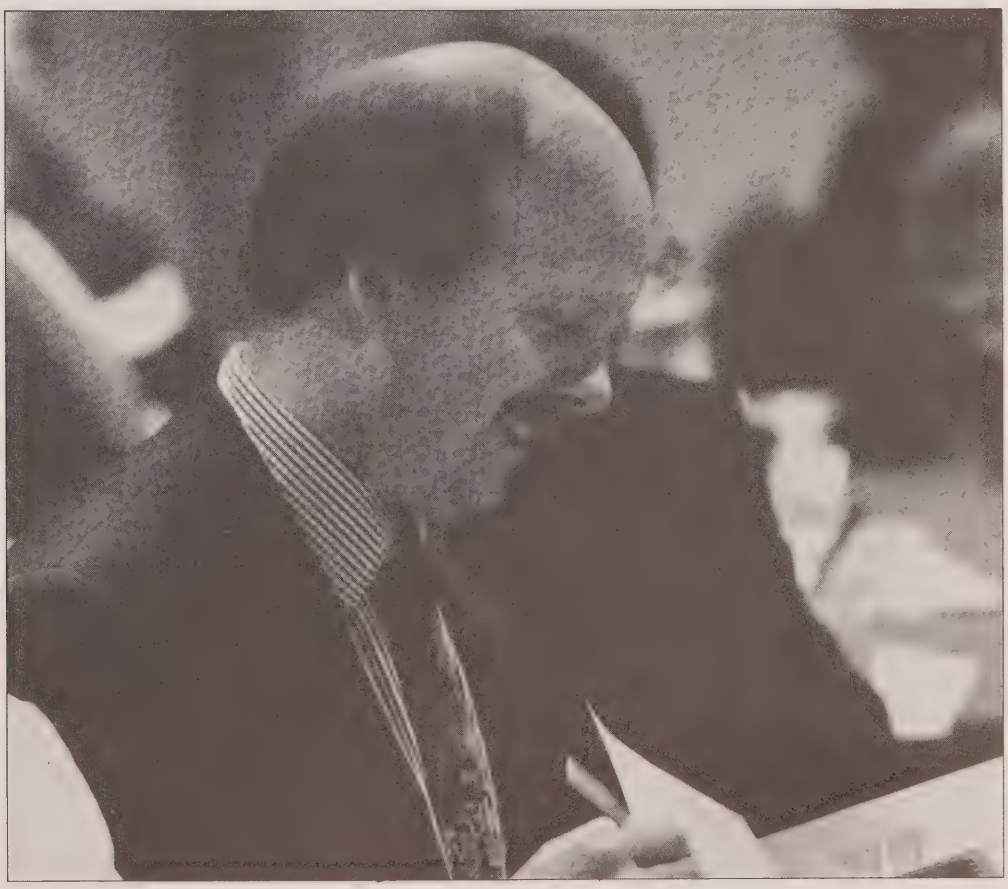
OCTOBER 26
Commissioner Wright gives the keynote address at the workshop "Access and Privacy: New Attitudes and Expectations".

NOVEMBER
The IPC makes a submission to the Canadian Radio Telecommunications Commission (CRTC) on Automatic Dialling - Announcing Devices.

NOVEMBER 1
The IPC releases "Workplace Privacy: The Need for a Safety-Net".

DECEMBER
The IPC makes a submission to the CRTC on the Caller ID Name Option.

DECEMBER
Commissioner Wright addresses privacy concerns regarding Bill 47 (photo radar) to the Standing Committee on General Government.



Commissioner Wright prepares for his keynote address at the fall access and privacy workshop.

New Attitudes & Expectations

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PAGE 1

and private organizations.... The Ekos survey revealed a hierarchy of concern – from nuisance to fear. Individuals seem quite capable of handling what they perceive as nuisances – like junk mail or telemarketing calls. But more serious covert practices give rise to fears – fears sometimes based on lack of understanding of exactly what technology can actually do....

According to the Ekos findings, Canadians believe personal privacy is under siege and they want something done about it. While there is no consensus on what should be done, people definitely seek a greater sense of control".

The Commissioner went on to identify another expectation – the public insistence on government efficiency and cost restraint.

"All of us in the public sector must operate within a framework of fiscal responsibility....

To balance access to information with fiscal constraint, a promising solution is routine disclosure. Instead of waiting for people to extract information through the formal access process – including official requests, mediation, appeals and even court cases – why not automatically release items which are clearly in demand?...

I imagine most organizations ... could think of various administrative and operational records that have been frequently requested and disclosed under freedom of information. These records could be released as a matter of course as part of your organization's larger customer service agenda".

Sometimes there appear to be more questions than solutions. Commissioner Wright identified an area where the public should be consulted.

"In the '90s information has become a commodity – a tradeable product that can be bought and sold....

We're hearing a lot about public expectations at this workshop, but I don't think we really know what the public expects concerning the sale of government information. People definitely feel privacy is under attack on many fronts. On the other hand, the emerging entrepreneurial spirit in the public sector seems to enjoy strong support.

As is so often the case in the information and privacy field, it is a question of balancing competing values – in this case non-tax revenue versus access and privacy. In my opinion, we need a public consultation process to arrive at a consensus on how the complex questions arising from tradeable data should be answered".

The Commissioner summarized the road ahead for access and privacy professionals and issued a challenge.

"As we go about our work, let us keep in mind that government is the custodian, not the owner, of the information it collects. Between government which gathers information and the citizens who provide it, there exists a virtual trust relationship concerning the data held.

Access and privacy are intrinsic features of government in a democratic society. The challenge for all of us is to continue to earn the confidence of the public by responding to new attitudes and expectations – that government data will be highly accessible while personal privacy is closely guarded".

A copy of Tom Wright's keynote address from *Access & Privacy: New Attitudes & Expectations* is available from the IPC Communications department.

Coming-up next issue:

Routine disclosure: working together! Find out details about the latest joint project between the Office of the Information and Privacy Commissioner and Management Board Secretariat.

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

Ontario

TOM WRIGHT, COMMISSIONER

Open Government

"THE BASIC PREMISE BEHIND ONTARIO'S ACCESS laws is that government is the custodian, not the owner, of the information it possesses".

So advised Ontario's Information and Privacy Commissioner Tom Wright in his remarks before the Standing Committee on the Legislative Assembly at the three-year review of the *Municipal Freedom of Information and Protection of Privacy Act.*

The Commissioner stressed the importance of government openness:

"The true owner of information is the public, not the government who holds it ... In today's society, access to government information is critical if public institutions are to be held accountable for their actions. Access to information can help restore the balance between government ... and the individual citizen".

Accordingly, the IPC is actively promoting the routine disclosure and active dissemination of government information.

CONTINUED ON PAGE 3

Forms Review Team (left to right): From the IPC Compliance department — Nick Magistrale, Noel Muttupulle and John Brans (Manager); and Assistant Commissioner Ann Cavoukian.

To e-mail or not to e-mail ?

... few people realize just how public their e-mail systems really are ...

IT HAS BEEN SUGGESTED THAT ELECTRONIC MAIL has the same security level as a postcard. This may be so. But before we discard our e-mail packages and revert to pen and ink, let's consider the possibilities.

On the positive side, e-mail can be an effective tool that helps break down barriers to communication and promotes the free exchange of information and ideas.

On the negative side, few people realize just how public their e-mail systems really are and how easily their personal information and confidential messages can be scrutinized by unexpected readers. E-mail creates an electronic trail of communications that can be used to monitor an employee's activities. Legal and ethical questions have emerged about the right to privacy of e-mail users, particularly in the workplace.

In order to heighten awareness of the privacy issues, the Office of the Information and Privacy Commissioner (IPC) has recently developed a set of guidelines to help public and private sector organizations develop formal e-mail policies.

Among the guidelines' suggestions:

- The privacy of e-mail users should be respected and protected;
- Each organization should create an explicit policy on the use of e-mail which addresses the privacy of its users;
- Each organization should make its e-mail policy known to its users and inform users of their rights and obligations in regard to the confidentiality of messages on the system;
- Users should receive proper training in regard to e-mail and the security/privacy issues surrounding its use;
- E-mail systems should not be used for the purposes of collecting, using and disclosing personal information, without adequate safeguards to protect privacy.

As discussed, e-mail can be an effective tool that can help promote good communications. But without policies and procedures to protect privacy, individuals may be reluctant to use such systems to their full potential. A commitment to protecting e-mail privacy may not only promote effective communication, but enhance the work environment by letting individuals know that their rights in the workplace are considered to be important enough to warrant protection.

If you would like a copy of "Privacy Protection Principles for Electronic Mail Systems", contact Jennifer in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

IPC Orders

The Office of the Information and Privacy Commissioner is continuing to streamline and simplify its processes to ensure the best possible service to its clients.

With this in mind, and due to the increasing number of orders that this office issues – over 900 to date – we are currently looking for ways to present the decisions in a simpler format.

Our aim is two-fold. First, we want to make the process of issuing orders more efficient, thus ensuring our clients get a decision as quickly as possible. Also, we plan to make the orders more reader-friendly, thereby ensuring an easy-to-understand document for everyone.

A review of the order format is underway. The results should be evident in decisions made in the second quarter of 1994. The next issue of *IPC Perspectives* will feature further developments.

Open Government

CONTINUED FROM
PAGE 1

By "routine disclosure", the IPC means the automatic release of certain types of administrative and operational records, in response to requests – either within or outside the formal access process. For instance, one government organization received numerous requests for building permit information. To improve customer service, they created a special database that could be directly accessed by the public.

This is a good example of routine disclosure. However, the IPC is urging government to go a step further – towards active dissemination of government-held information. "Active dissemination" is the periodic release of useful general records without waiting for an access request. This requires anticipation of customer needs and acting to ensure such useful records are ready.

Examples of active dissemination can be found in many municipalities. Councils regularly consider whether program budget reports received at in-camera meetings can be publicly disclosed without a formal request under the *Act*. If a council decides that confidentiality is unnecessary, it can authorize the report's release without an access request.

The IPC believes the practices of routine disclosure and active dissemination are especially promising in today's climate of fiscal restraint. Instead of waiting for consumers to extract information through the formal access process – which may involve mediation, appeals and even court cases – it would be more cost-effective, where appropriate, to freely release items of interest to the public. Routine disclosure and active dissemination can also foster open government and assist organizations to meet the growing public demand for information.

In order to help institutions in their challenge to meet the public's growing need for information, a working group was established to provide direction in the area of routine disclosure and active dissemination. The working group, representing a cross-section of organizations covered by access and privacy legislation in Ontario, worked together to develop a paper entitled "Routine Disclosure/Active Dissemination (RD/AD)". This document was developed through the combined efforts of: the City of North York, Go Transit, Halton Regional Police, Information and Privacy Commissioner/ Ontario, Management Board Secretariat, Ministry of Finance, Regional Municipality of Peel and Simcoe County Board of Education.

If you would like a copy of "Routine Disclosure/ Active Dissemination (RD/AD)", please contact Jennifer in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

Catching up on some FOIP reading at the IPC. See "Decisions, decisions!" p.4.

Decisions, decisions !

Orders as well as compliance investigation reports are vital sources of information ...

IPC ORDERS FORM A KIND OF JURISPRUDENCE or "FOI yardstick" which government organizations often refer to when measuring the various interests of an access request. Orders as well as compliance investigation reports are vital sources of information for access and privacy professionals in Ontario. Accordingly, here is a list of where you can find details about IPC decisions.

- Full-text orders and compliance investigations. All orders and compliance investigation reports issued on or after June 1, 1993 are available for purchase from Publications Ontario. They are also available for viewing at the IPC reference library.
- *IPC Précis.* This quarterly publication presents brief outlines of all orders, plus textual summaries for selected orders. A copy of *IPC Précis* may be requested through the IPC Communications department.
- *Directory to Précis.* If you don't know which issue of *Précis* has the information you want, just check this annual publication. It can help you quickly locate the specific issue of *Précis* containing the highlighted order or compliance investigation that you are looking for.
- *IPC Indices.* These annual publications catalogue IPC orders by subject or section. Simply refer to the indices enclosed in this distribution package.

You may request a copy of *IPC Précis, Directory to Précis, Subject Index* and either the provincial or municipal *Sectional Index* from Jennifer in the IPC Communications department at (416) 326-3952. If you would like to arrange a visit to the IPC reference library, call or write the IPC Legal department secretary at 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1; telephone (416) 326-3333 or 1-800-387-0073.

Copies of full-text orders are available through Publications Ontario Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8; fax (416) 326-5317.

Access and Privacy in Canada

YOU MAY BE AWARE THAT ON JUNE 15, 1993, the National Assembly in Quebec passed Bill 68, the *Act Respecting the Protection of Personal Information in the Private Sector.* You may also be aware that on October 4, 1993, British Columbia's *Freedom of Information and Protection of Privacy Act* came into effect. But did you know that Nova Scotia, Saskatchewan and Alberta have had recent access and privacy developments as well? The following are some brief highlights:

Nova Scotia
The new *Freedom of Information and Protection of Privacy Act* is now law. The legislation requires that the *Act* be proclaimed no later than July 1, 1994.

Saskatchewan
The *Local Authority Freedom of Information and Privacy Act* was proclaimed July 1, 1993 and covers all municipal government bodies.

Alberta
An all-party legislative committee was established in the fall of 1993 to hear from the public with regard to Bill 1 – the *Access to Information and Protection of Privacy Act.* The committee's recommendations, found in the Report on Public Consultation (December 1993), are being reviewed by the Alberta government.

Forms Review

THE ONTARIO GOVERNMENT COLLECTS personal information in many different ways – 43,164 different ways, to be exact.

A survey by the Ontario Records Council revealed that 43,164 registered forms are being used to collect information across the province. It was estimated that an additional 40,000 unregistered forms are also in use.

Since forms are a prominent method used by the government to collect personal information, the IPC felt that a review of a sample of government forms would be appropriate. The forms were reviewed for proper "notice of collection" as per the requirements of section 39(2) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The IPC reviewed 11 ministries and sampled 351 forms. The findings indicated that 37 per cent of these forms were in full compliance with the three-part notice requirements of the *Act*; 63 per cent were not in compliance.*

This means that while roughly one-third of the forms reviewed gave complete notice of collection, almost two-thirds left out some essential details. As per section 39(2) of the *Act*, government organizations are required to advise individuals of certain facts when collecting personal information. They must advise individuals of: the legal authority to collect the personal information being requested; the purposes for which the information is being collected; and the name of a contact at the organization for further information.

The IPC made a number of recommendations to each of the 11 ministries involved in the review. Above all, the IPC stressed the importance of providing individuals with full notice when collecting personal information. Further details of the findings in this review will be provided in the next issue of *Perspectives*.

* For complete findings of the review, please see the "Review of Forms Used to Collect Personal Information in the Provincial Government – Summary Report of Significant Findings". For further information on providing notice of collection, refer to *IPC Practices: Providing Notice of Collection* (Compliance 3, July 1993). These publications are available through the IPC Communications department. Call Jennifer in Toronto at (416) 326-3952 or 1-800-387-0073.

Q & A is a regular column featuring topical questions directed to the IPC.

Q&A

Q: *Are hospitals and universities covered by the* Acts*?*

A: Hospitals and universities are not covered by access and privacy legislation in Ontario. There is no formal access procedure at either hospitals or universities under the *Acts*.

On January 18, 1994, the Information and Privacy Commissioner/Ontario appeared before the Standing Committee of the Legislative Assembly to recommend that the *Acts* be extended to hospitals and universities.

The Standing Committee is undertaking a review of the municipal *Act**. When the review is complete, recommendations will be made to the Legislative Assembly regarding amendments to the municipal legislation.

* For more information, see "Three-Year Review Summary" on p.6.

Three -Year Review Summary

Commissioner Tom Wright urged the extension of information and privacy legislation to cover hospitals, universities, social service agencies and professional governing bodies, during appearances before the Standing Committee on the Legislative Assembly January 18 and 25.

Current Ontario freedom of information and protection of privacy legislation applies only to provincial and municipal government organizations.

"All of these additional bodies perform important public functions and many of them receive substantial government funding", Wright pointed out in his remarks. "It is in the public interest to make these key organizations more readily accountable by providing access to their general records. At the same time, these bodies often hold sensitive personal information which requires legislated privacy safeguards".

The extended coverage was one of 53 amendments proposed by the IPC in a written submission. The committee is conducting a review of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), as mandated by law after the *Act* has been in operation for three years.

Applicable to municipal government organizations, the *Act* has been in force since January, 1991. It closely mirrors the *Freedom of Information and Protection of Privacy Act* covering provincial government organizations, in effect since 1988. Given the links between the two *Acts*, the submission proposed concurrent changes to both.

A second major recommendation called for disclosure of the salaries of all provincial and municipal government employees. At present, legislation permits the release of salary ranges only.

"This recommendation reflects the spirit of new rules under the *Ontario Securities Act* concerning disclosure of executive salaries in the private sector", Wright observed. "Access to salary data is one way of holding government organizations more accountable to their shareholders, the tax paying public".

Other proposed amendments were intended to expand access to information, strengthen privacy protection and make the legislation more workable. Among them:

- special provisions dealing with electronic records, including mandatory consideration of access and privacy features in the design stage of government information systems;
- safeguards to ensure continued public access to basic government information when government negotiates contracts with the private sector to distribute the information;
- limits on the introduction of new unique personal identifying numbers by government organizations.

At the time of this writing, the Standing Committee was deliberating on whether to hold public hearings on the extension of the legislation to public hospitals.

Thank you for your responses!

With the winter issue of *Perspectives*, we sent a brief questionnaire asking what you thought about our publications. Your confidential responses are being analyzed and recommendations will be considered for future publications.

Coming up next issue:

The IPC reaches a milestone with Order 1,000.

IPC
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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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TOM WRIGHT, COMMISSIONER

Informational Privacy of Concern to Public

"INFORMATIONAL PRIVACY ISSUES ARE RAPIDLY moving up the public agenda," said Tom Wright, Ontario's Information and Privacy Commissioner, in a keynote address given at the annual access and privacy workshop held in Toronto on November 21 and 22, 1994.

In this address, Commissioner Wright reflected on the effect the information highway will have on access and privacy in the future.

Over 250 people attended this year's workshop which was jointly sponsored by the Information and Privacy Commissioner, the Freedom of Information and Privacy Branch of Management Board Secretariat and the Association of Municipal Clerks and Treasurers of Ontario.

"The information highway . . . if the number of newspaper column inches is any measure, has been one of the top stories of the year . . . ."

The Commissioner went on to discuss how the information highway could enhance access.

"First, on the access side, we should keep in mind that the information highway is only a means of communication. What data travels along the road is another matter. From the point of view of government information, there will be little traffic moving on the highway unless the traditional reflex towards secrecy is replaced by a vibrant commitment to openness.

CONTINUED ON PAGE 6

Assistant Commissioner Irwin Glasberg chaired Speed Bumps on the Information Highway at the fall access and privacy workshop.

Electronic I.D.

A RECENT REPORT FROM THE OFFICE OF THE Information and Privacy Commissioner says that individual privacy could be significantly affected by all the electronic identification now being planned for our wallets.

In Ontario, new, digitized photo Health Cards and Driver's Licences will be released soon. As well, the idea of fingerprint identification cards — either for people on welfare, or for all Ontario citizens — has been raised.

In Ottawa, Ministers are considering electronic Indian Status cards for native people, Permanent Resident cards for landed immigrants, and a handprint passport.

The new, proposed identification cards are part of a growing trend, says Commissioner Tom Wright. "It's becoming possible to find out a lot about an individual person, electronically. In Canada and all over the world, the rise of technology is proving to be the fall of individual privacy."

At issue is exactly what kind of safeguards would be planned for electronic identification. Wright's recently-released report, "Privacy and Electronic Identification in the Information Age", cautions that any new method of collecting information needs to be carefully designed with fair information practices in mind.

Fair information practices are not, in themselves, a new idea. What has changed is their application: It's now necessary to think about fair information practices in the electronic world of technology and computers.

And the world, with technology and computers in it, is a very different place than it was a century ago: Thanks to the storage capacity of computers, an enormous number of regular transactions are now recorded electronically. Those electronic records can be, and are, easily stored, sold, rented or traded.

Within established limits, government ministries share and compare records. Companies rent their databases to each other. In some cases, the public and private sectors are even pooling information.

"It's now possible for someone out there to build a very complete picture of you," says Wright. "And you won't know anything about it."

Polls show that this technological assault on privacy is making Canadians uneasy right now. In 1978, Equifax, a credit bureau that's been tracking the consumer appetite for privacy, found 67 per cent of Canadians were "very concerned" about privacy.

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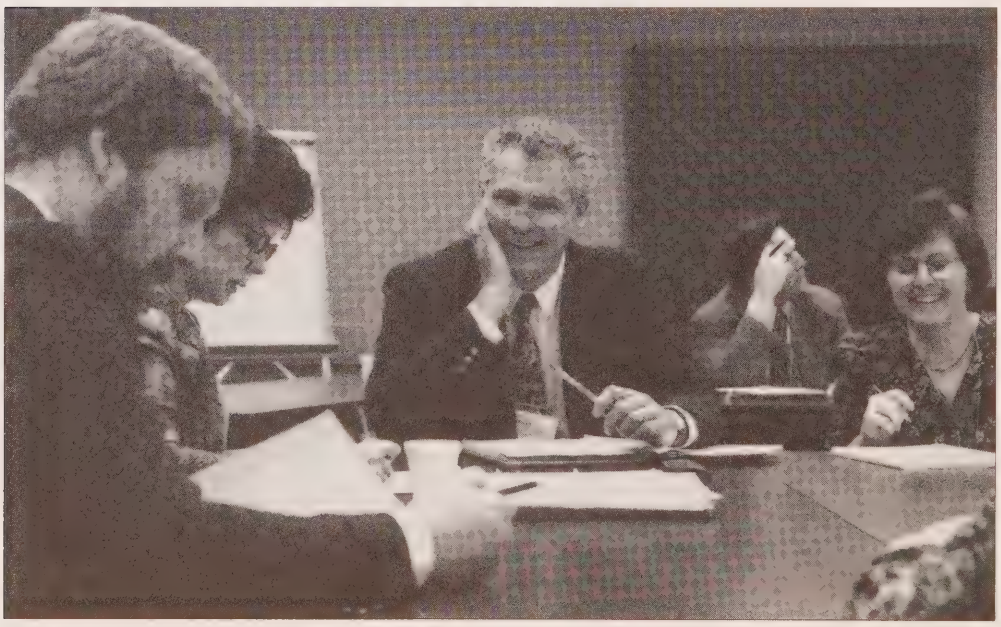

Co-ordinators met for a series of sessions at the fall workshop to discuss access and privacy issues.

Three-Year Review of the Municipal *Act* Completed

The Standing Committee on the Legislative Assembly has completed its three-year review of the *Municipal Freedom of Information and Protection of Privacy Act*. The *Act* requires that a review be held after the legislation has been in effect for three years.

The report issued by the Committee includes a series of 84 recommendations.

The municipal *Act* came into effect on January 1, 1991. It is modelled after the *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988.

In 1991 the *Freedom of Information and Protection of Privacy Act* underwent a similar review. The result was a detailed Committee report containing 81 recommendations.

At the time, the government was unable to act on the Committee's recommendations because of a crowded legislative agenda, and the government indicated it would look at it again once the review of the municipal *Act* was concluded.

The government now has the reports, and the Information and Privacy Commissioner/ Ontario is hoping it will be able to respond quickly to the suggested recommendations to both *Acts*.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *Is there one place I can go to access all the information the provincial and municipal government has stored on me?*

A: There is no central location where government information on an individual is stored. In order to access this information, you need to know whether the information you want to access is held by a provincial or local government organization.

Provincial Records

A *Directory of Records* is available for viewing throughout Ontario at offices of all ministries, provincial government organizations and in public libraries.

Consult the *Directory of Records* to find out the kinds of records held by ministries and organizations covered by the provincial *Act*. The *Directory* also describes what each organization does, as well as the kinds of general records and personal information kept by these organizations; it also lists the addresses of provincial government organizations.

Municipal Records

Municipalities, local boards, agencies and commissions covered by the municipal *Act* have prepared their own directories which should be available at offices such as city halls, police departments and boards of education.

To make a request under the *Acts*, follow these steps:

Step 1: Complete a request form, or write a letter stating that you are requesting information under one of the two *Acts*. These forms are available from government organizations across the province.

Step 2: Forward the completed request form or letter to the "Freedom of Information and Privacy Co-ordinator" at the government organization most likely to have the information you are looking for.

1994 – The Year in Review

January – The IPC submits "Call Management Services - Name Display" to the CRTC.

January – The IPC submits suggested changes to the *Municipal Freedom of Information and Protection of Privacy Act* to the Standing Committee on the Legislative Assembly. Commissioner Tom Wright makes two presentations to the Committee during the hearings.

January – The IPC conducts a review of forms used to collect personal information within the Ontario government.

February – The IPC releases "Privacy Protection Principles for Electronic Mail Systems".

February 5 – "Health Net" is unveiled by the Government of Ontario. This new computer network links Ontario drug stores to a province-wide database. The IPC was involved during the design of the system to ensure privacy protection.

February 14 – The *Environmental Bill of Rights* is proclaimed. The bill establishes a computerized environmental registry which can be accessed by anyone with a computer modem.

March 28 – Industry Canada holds workshop on the Privacy Implications of the Information Highway.

April – The IPC releases "Routine Disclosure/ Active Dissemination (RD/AD)".

May – The IPC releases "Privacy Alert: A Consumer's Guide to Privacy in the Marketplace".

June – The IPC releases its 1993 Annual Report.

June 27-29 – The Summit of Canadian Access and Privacy Commissioners takes place in Ottawa.

July – Nova Scotia proclaims *The Freedom of Information and Protection of Privacy Act.*

August – A report released by the International Labour Organization (part of the UN) found that workers in industrialized countries are steadily losing their privacy.

August 16 – The Canadian Human Rights Tribunal rules that testing job applicants for signs of drug abuse is not a breach of the federal human rights code.

September – The Canadian Human Rights Commission asks the Federal Court to overturn a Canadian Human Rights Tribunal decision that allows the Toronto Dominion Bank to continue screening new employees for drug testing.

September – The Ontario Library Association's Coalition for Public Information releases a document called *Future-Knowledge: A Public Policy Framework for the Information Highway.* The IPC developed the access and privacy principles included in the document.

October – The IPC presents a submission to Industry Canada called *Privacy and the Canadian Information Highway* in response to their discussion paper *Privacy and the Canadian Information Highway.*

October – The Information Highway Advisory Council releases "Privacy and the Canadian Information Highway: Building Canada's Information and Communication Infrastructure".

October 1 – An Alberta Order-in-Council is signed proclaiming sections of the *Freedom of Information and Protection of Privacy Act.*

November – The IPC releases "Privacy and Electronic Identification in the Information Age".

November 22 – Ontario's Information and Privacy Commissioner, Tom Wright, gives the keynote address at the workshop *Fast Forward: Access and Privacy Issues in the Information Age.*

December – The Standing Committee on the Legislative Assembly issues a report on "Suggested Changes to the *Municipal Freedom of Information and Protection of Privacy Act*".

Summaries

Investigation I94-042M

An individual was diagnosed as HIV-positive, and advised by his doctor to get some more help to care for his mother, who had suffered a stroke. The local Municipality already provided some in-home assistance, through a contract with a private company.

The Municipality turned down his request for additional help. The individual then chose to reveal his HIV status to the Municipality. He was told the information would not be passed on to the private company, without his consent.

However, when he later phoned the private company about another matter, the individual was told that the company had learned about his HIV status — from the Municipality.

The Municipality believed that the situation was a compelling circumstance that could affect someone's health or safety. As a result, they had given the private company the information in order to protect the safety of its staff.

The individual complained to the Information and Privacy Commissioner/Ontario (IPC) that the Municipality had improperly disclosed his HIV-positive status to the private home care company.

The IPC found that it was not necessary to disclose the individual's HIV status, since the private company had a policy to use "universal precautions" as standard procedure. The staff did not need to know the individual's specific condition to be safe, particularly since they were not providing care for him but rather his mother.

Order M-430

A Town was interested in buying a certain piece of property, so it commissioned an environmental audit. Satisfactory audit results were a condition of the sale.

A request was made for the audits. The Town denied access, and the requester appealed to the Information and Privacy Commissioner/Ontario (IPC).

The IPC considered the implications of two procedural concerns: the appeal was filed after the 30-day deadline which is prescribed by the *Act*, and the Town no longer had possession of the audits by the time of the Inquiry.

After the Town decided not to buy the property, it agreed to return the environmental audits to the property owner.

The IPC ruled that the current status of a record with respect to custody and control was not at issue. In this case, the Town had custody and control of the audits when the original request was made, and when the appeal was filed. Accordingly, the audits were subject to the *Act*.

The IPC also considered the 30-day deadline. When the Town originally denied access to the audits, it sent a letter to the requester explaining the decision. The letter did not inform the requester of his right to an appeal, or the 30-day deadline for filing an appeal. The IPC found that institutions must provide requesters with a meaningful notification of the right to appeal, including the time limit. It ruled that the 30-day appeal deadline should not apply in this case. As a result, the appeal was deemed valid.

Electronic I.D. (cont'd)

That number has climbed steadily ever since. It reached 84 per cent this year.

"The technological invasion is a silent one," says Wright. "And it's not going away. Either we learn to harness technology to protect privacy, or privacy will be the invasion's first casualty."

If you would like a copy of "Privacy and Electronic Identification in the Information Age", contact Lisa in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

"It is for this reason that my office is energetically promoting the routine disclosure and active dissemination of government information.

"The IPC feels government organizations should automatically release designated types of administrative and operational records in response to requests, either within or outside the formal access process ....

"We are also urging government organizations to go farther to anticipate customer needs by periodically releasing useful general records without waiting for an access request."

The Commissioner emphasized that the information highway should be available to everyone.

"It is also imperative to ensure wide access to the information highway itself. It will be important to avoid financial toll booths where government and other basic services are concerned. Otherwise we risk creating a new social division between information 'haves' and 'have-nots'."

The Commissioner also discussed the public's concern with privacy. "On the privacy side, as the polls show, the information highway and its uses are causing anxiety."

He quoted some recent privacy horror stories as an illustration:

• Lotus Marketplace — a joint venture by a computer company and a credit bureau to produce a series of diskettes — available to anyone at a price — with the names, addresses, buying habits and income details on 80 million Americans.

• Or Blockbuster Video's plan to sell mailing lists categorized by rental patterns — that is, lists of those who rent action movies, children's movies, adult-rated movies and so forth.

• Or the sale by Equifax of a list of creditworthy customers to Citibank, which then tried to sign them up for a pre-approved credit card.

In all three cases the projects were cancelled following a consumer backlash.

"Incidents like these convince me that privacy protection is about to break through as a major consumer issue — the way environmental concerns led companies to introduce green products a few years ago. Those businesses that respect privacy will gain an edge over the competition, while those that don't will find themselves at a disadvantage.

"The information highway — which without a doubt brings enormous economic and social benefits — does challenge our traditional concepts of access and privacy. We have to ask ourselves if access in the computer age will mean something less than it did in the age of the telephone — and if we are now willing to abandon our privacy, our right to be left alone, or to remain unknown."

For a copy of the Commissioner's keynote address at "Fast Forward: Access and Privacy Issues in the Information Age", please contact Lisa in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

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VOLUME 3
ISSUE 3
FALL 1994

TOM WRIGHT, COMMISSIONER

Consumer Tips and Business Practices Suggested to Protect Privacy in Marketplace

As consumers go about a host of day-to-day tasks like withdrawing money from a bank machine, shopping with a credit card or applying for insurance, they leave a data trail. Using computers, businesses can compile this scattered information into personal profiles that make it possible to target marketing campaigns – an approach increasingly more profitable than conventional mass marketing.

But the collection and transfer of personal data through modern technology is creating an unprecedented threat to individual privacy. Opinion polls show this issue is moving up the public agenda: one recent nationwide survey ranked privacy as high as the environment and unemployment as items of public concern.

The IPC has mounted a two-pronged response by developing some practical

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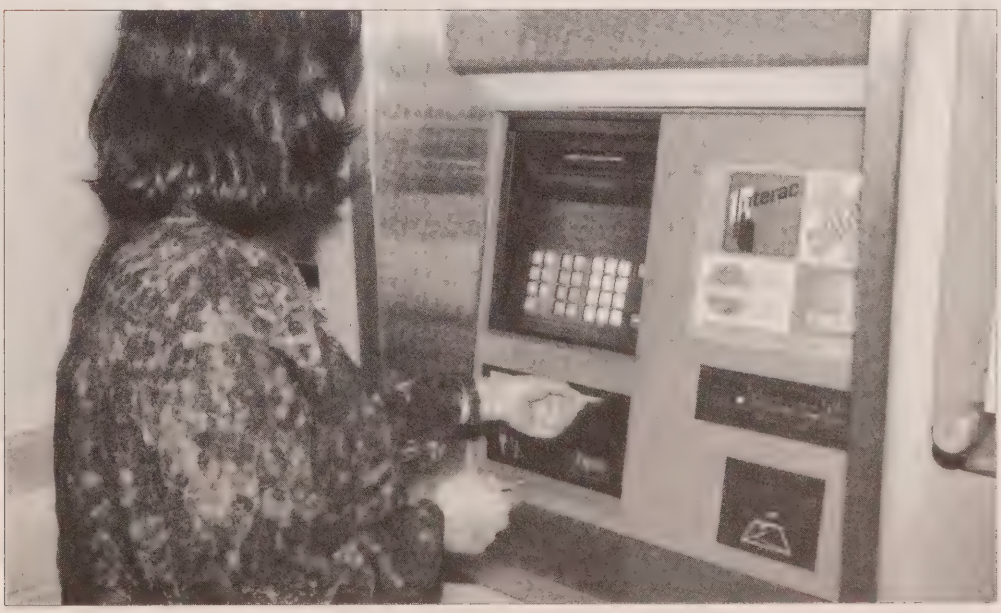

Consumers leave a data trail when they carry out day-to-day tasks and can often contribute unknowingly to their own loss of privacy.

Milestones Reached as IPC Records 1000th Order and 2500th Mediation

ONTARIO'S FREEDOM OF INFORMATION SYSTEM attained two significant milestones in May 1994 as the IPC issued its 1000th order and completed its 2500th mediation case. Orders and mediation are used to resolve appeals filed when government organizations refuse to release information, or when other aspects of the handling of an information request are at issue.

The provincial *Act* has been in force for nearly seven years and the municipal for nearly four – so as might be expected more than half of both orders and mediation cases involve provincial government organizations. Users of the system span an extraordinary range of interests – from newspaper reporters to business firms to academic researchers to parents of school children.

Mediation is by far the most frequent way of resolving an appeal, accounting for more than half of all cases settled each year under both *Acts*. Statistics indicate the number of mediated appeals is even higher over the past two years. The results show that convincing the parties to negotiate a mutually satisfactory outcome is an effective dispute resolution technique and one which the IPC will continue to advocate.

In recent years the number of IPC decision-makers has grown from the original two – the Commissioner and the Assistant Commissioner-Access – to seven, with five Inquiry Officers now having order-making powers.

This change, coupled with reforms to streamline operations, has translated into a substantial boost in the number of orders: the 378 orders issued in 1993 represent nearly seven times the 1991 volume.

Orders are also becoming more user-friendly. The long and legalistic documents of the IPC's early days have been supplanted by shorter orders that provide more background on the case and are written in plainer language. These improvements reflect feedback from surveys conducted by the IPC of appellants and the government organizations involved.

Together, the IPC orders comprise a substantial body of legal interpretation that provides guidance for future decisions. Some examples of significant rulings are the following:

· Regarding workplace harassment investigations, the IPC has stressed that those accused of misconduct must be apprised of the identity of the complainant and substance of the allegation, in order to respond. In addition, the parties to the complaint (ie. the complainant and the alleged harasser) should be given access to the basis of the investigator's decision.

· In a leading case we found that government records available, for a price, through a commercial vendor did not qualify as "currently available to the public", and so had to be disclosed to a requester through the freedom of information system.

· In exploring access to severance clauses in termination agreements between government organizations and departing employees, the IPC has held that a key factor to be weighed is whether disclosure is desirable to subject government activities to public scrutiny.

· We have examined the status of petitions and firmly stated that by their very nature petitions are not documents that have an aura of confidentiality.

The next thousand orders will likely be just as challenging as the IPC works to apply access and privacy principles in a rapidly evolving and increasingly complex Information Society.

Computer Matching: Safeguards Improved

THE FIRST MANAGEMENT BOARD DIRECTIVE on Computer Matching has been released. Computer matching is already used by some ministries to test the accuracy of their databases. By uncovering discrepancies, ministries believe they can reduce fraud, and improve the efficiency of their systems.

The Directive was developed to balance the need for administrative efficiency with the need for individual privacy. It will regulate all new matches between government databases.

Key safeguards require ministries and agencies to:

- Perform an assessment to justify a proposed computer match before it takes place, and send that assessment to the IPC for comment.
- Notify an individual if they plan to use information generated by a computer match, and give that person the chance to verify his or her records.
- Publicize all computer matching activities in the Directory of Records.

The IPC now has five Inquiry Officers with order-making powers. From left to right: Donald Hale, John Higgins, Assistant Commissioner Irwin Glasberg, Anita Fineberg, Laurel Cropley and Mumtaz Jiwan.

IPC Redesigns Communications Package after Readership Survey

THIS ISSUE OF *PERSPECTIVES* IS PART OF A REvamped communications package the IPC is sending on a regular basis to interested parties in the information and privacy field. Impetus for the redesign came from a readership survey conducted this January, as well as from the IPC's own assessment of communications priorities in a tight fiscal climate.

Our sincere thanks to the nearly 400 readers who replied to the survey. Your input has helped us target our efforts to meet your needs as cost-effectively as possible.

Readers will notice a new feature in this edition of *Perspectives* – an informative column highlighting and briefly summarizing significant access orders and privacy investigation reports. We have also enclosed in this package a more detailed subject index than we have produced in the past. This useful research tool will be updated three times a year, instead of once a year as was the case with our previous indices. The new column in *Perspectives* and the enlarged index replace the former IPC publication *Précis.*

Otherwise we are keeping *Perspectives* just as it is – since you've told us you like it that way. We'll continue to present current news about the IPC's activities, procedures and research and policy initiatives.

Readers should also be aware that Ontario's Management Board Secretariat publishes *An Annotation to Ontario's Access and Privacy Legislation,* which annotates all sections of both the provincial and municipal Acts with references to pertinent IPC orders and investigation reports. The full text of IPC decisions can be purchased from Publications Ontario on an annual subscription or per item basis. The Management Board annotation, which is revised annually, is also available through Publications Ontario.

The IPC would be interested in your reaction to the new communications package as well as any suggestions for further changes or refinements. Please call Lisa in our Communications Department at 416-326-3952 or write to the address on the back page of this newsletter.

As a final step in our communications streamlining, we are updating our mailing list. If you would like to continue receiving mailings from the IPC, please be sure to complete the enclosed postcard and return it to us.

Fast Forward: 1994 Access and Privacy Workshop

Fast Forward, this year's access and privacy workshop, has been designed with your needs in mind.

Last year's workshop survey indicated you wanted more round tables, more chances to share your ideas with FOIP colleagues from across the province and a greater variety of topics geared to your individual needs.

Fast Forward features six case studies and 16 round table discussions, with topics ranging from tenders and how to set up records systems to issues for new municipal councillors and what to expect in a privacy investigation.

Don't miss this opportunity to hear about the latest key issues from specialists and leaders in FOIP community.

Space is limited and the deadline for registering is November 15, 1994.

Registration forms are available from the IPC. Please call Clare at (416) 326-3333 or 1-800-387-0073.

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Summaries

In this issue, IPC Perspectives *introduces "Summaries", a new column highlighting significant orders and compliance investigations issued by the IPC in recent months.*

Order P-736

The IPC ordered substantial disclosure of an audit report prepared by the Ministry of the Solicitor General and Correctional Services. The audit investigation related to a youth residence which, although publicly funded, is not a public agency. The audit sought to determine whether the residence was adequately managed and whether its programs met the Ministry's Residential Service and Standards Guidelines.

The report contained personal information. The IPC found that the desirability of subjecting the Ministry's activities to public scrutiny was a significant factor favouring disclosure. In a recessionary environment, it is essential to ensure that tax dollars are spent wisely. This applies not only to internal programs carried out by government organizations, but also to contracts for services with third parties.

Where a publicly funded program is administered by a third party under contract, the public must be satisfied that the program is properly carried out, and that the Ministry is monitoring its operation in an appropriate manner.

Investigation I94-030M

An individual made an access request to a school board's Freedom of Information and Privacy Co-ordinator under the municipal *Act.* The request was for general records. In responding to the request, the Co-ordinator disclosed the individual's name, address, and unlisted telephone number of the requester to the principal of the high school where the records were held.

While the principal's duties included assisting in processing access requests, the IPC found it was not necessary for him to have the personal information of the requester to perform this duty.

Institutions should not disclose the names of requesters, and any other personal information, except in accordance with sections 32/42 of the municipal/provincial *Acts.*

• • •

Orders and Compliance Investigations Available

Full texts of orders and compliance investigations reports are available from Publications Ontario.

· Publications Ontario makes subscriptions of all orders and compliance investigation reports available at an annual cost of $350 plus GST (a 20% surcharge will be added to orders from outside Ontario). At the end of each month they will mail subscribers all the orders issued that month.

· If you have an urgent request, Publications Ontario will arrange to have an order sent by courier at your expense. You will receive the order within two working days.

· Regular requests for individual orders will be mailed out within 10 working days.

· If you have any further questions about the distribution of IPC orders, please contact Julie Andradi at Publications Ontario in Toronto. You may call (416) 326-5312 or 1-800-668-9938. Personal shopping can be done at the Publications Ontario Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8.

Consumer Tips

CONTINUED FROM
PAGE 1

suggestions for both consumers and businesses, which appear in two new publications – *Privacy Alert: A Consumer's Guide to Privacy in the Marketplace* and *Privacy Protection Makes Good Business Sense.*

As *Privacy Alert* indicates, consumers themselves often contribute unknowingly to their own loss of privacy. Many of us readily reveal personal information – telephone number, address, occupation, income, age – that is not necessary for the transaction at hand.

Sometimes the information is relevant, such as financial data required for a loan application. But it's a different story if you are asked to supply personal details when renting a video game or filling out a warranty card. Often such information is being collected for a different purpose, such as for sale to other organizations.

The IPC developed 18 consumer tips to make vigilance about privacy a regular part of smart shopping. These common-sense tips range from asking questions about the need for and purpose of the information requested, to checking your file at the credit bureau annually, to using your health card only for health services. The IPC publication stresses that it's important to challenge a request for information, and to say no if you're not satisfied with the answer.

In today's economy, leading businesses strive to meet and surpass customer expectations – and one thing customers are beginning to expect more of is privacy. In this climate it simply makes good business sense for companies to make privacy protection a standard operating procedure.

The IPC business paper, *Privacy Protection Makes Good Business Sense*, underlines that while privacy protection is not in conflict with legitimate commercial needs for information, personal data must be viewed as more than a commodity. The publication lists a series of best practices to help businesses approach personal information with heightened sensitivity.

Underlying the suggestions are the principles that businesses should collect only accurate and relevant information, grant people access to their own personal records and limit access by unauthorized third parties. Consumers should be seen as partners to be treated with respect and consulted when an organization devises policies and practices affecting privacy. Businesses that implement these fair information practices will build customer loyalty – and gain an edge on the competition.

At present, Quebec is the only Canadian jurisdiction with a comprehensive data protection scheme covering the private sector. Elsewhere, the solution for safeguarding privacy in the marketplace rests entirely with alert consumers and responsive businesses.

Erratum

An application for judicial review was made in March 1993 with respect to Order M-82. However, this information was omitted on page 12 of the Information and Privacy Commissioner's 1993 Annual Report. The IPC apologizes for any inconvenience this may have caused.

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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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TOM WRIGHT, COMMISSIONER

Information Management

FIFTY YEARS FROM NOW, IF SOMEONE WERE interested in knowing what your department, agency or ministry did, what records would they need to understand it? What is the key role of your organization in society? Why does it exist? Would the records and filing systems your department created enable a member of the public to find the answers to these questions?

These are the kinds of questions Ontario Public Service managers should ask when considering how they handle the information in their care. Records have a life cycle ... from creation, through intensive operational use, to occasional later use, to eventual destruction or archival retention.

The Archives works with ministries to make sure that their information is well managed throughout its life cycle. "It's vital to the continued operation of the government, and there is legislated right to public access. So information needs to be managed in a way that makes it accessible," says Ian Wilson, Archivist of Ontario.

"What the *Freedom of Information and Protection of Privacy Act* (the *Act*) did for us was reinforce the sense that information is important — an asset," he says. "It needs to be managed the same way we manage space, money and human resources."

For archivists, there is an essential link between public access under the *Act* and

CONTINUED ON PAGE 2

Ian Wilson, Archivist of Ontario, works with provincial government organizations to make sure their information is well managed.

Information Management

CONTINUED FROM PAGE 1

information preservation "... we can only make use of information if it exists," says Wilson.

"If you really want to run a government that isn't accountable, you don't keep any records. But if a government is to be accountable to the people, then we need good records of the key events, decisions and policies," says Wilson.

The Archives plays an essential role in preserving government records over time. Under the *Archives Act* (1923, amended 1972) no record created by the Government of Ontario and its major boards, commissions or agencies can be disposed of or destroyed in any way without the authorization of the Archives.

The *Archives Act* gives the Archives custody of all official Ontario government records after they are no longer needed for administrative use.

This is a monumental task. The Archives of Ontario's current holdings consist of 200,000 cubic feet of textural records, 30,500 historical maps, 127,000 architectural drawings, 17,000 hours of audio, film and video recordings, 3,200,000 photographs, 50,000 published volumes and 50,000 reels of microfilmed records. The collection documents Ontario's history from the late 1700s to recent periods.

If the Archives' records were stacked up and arranged side-by-side they would cover a hockey rink to a depth of four metres.

The Archives' government record collection and rate of records transfer have both grown substantially in recent years. Archival textural holdings increased from 59,000 cubic feet in 1979 to 200,000 cubic feet in 1994, an increase of 239 per cent. Last year, they took in 20,000 cubic feet of files. This is only a small portion of the total records created by the government each year.

As a result of the *Act*, ministries, departments and agencies are transferring records to the Archives sooner. Few records are kept by a government organization longer than seven years. Within that time frame a decision must be made whether to transfer them to the Archives or have them destroyed.

"When records are in the Archives' custody and control, we are responsible corporately to make the access decision on the body of records presented to us," says Wilson. "Since 1988, we have had 1,000 requests under the *Freedom of Information and Privacy Act* and reviewed about 330,000 pages."

"We have the largest body of records, subject to the *Act* in Ontario government, about 180,000 cubic feet. Certainly it is the most diverse body of records, and it is a body of records that we as an institution didn't create."

Wilson says this can lead to problems administering the *Freedom of Information and Protection of Privacy Act*. Problems other ministries and agencies don't have. They are administering freedom of information and protection of privacy for relatively recent records that they created. They know the programs, the filing system and the sensitivity of the records.

The Archives eventually receives a portion of records from all ministries for long term maintenance. Since the Ontario government does not have a standard filing system, there is great diversity in the way records are organized. Sometimes file lists for transferred records are either poorly done or missing completely. Inadequate file lists, combined with the sheer volume of records, create difficulties in responding to access requests.

The Archives is developing guidelines and working with government organizations to improve the way they manage their information. This will benefit the ministry or agency in their own operations and ability to respond to access requests and, later, help the Archives in dealing with transferred records.

Beginning last year, a series of Recorded Information Management Fact Sheets were produced and distributed by the Archives to program managers across the Ontario Public Service. The aim is to provide some practical, plain language advice on managing their information. In January, the Archives also issued guidelines to Ministers' Offices explaining their responsibilities under the *Archives Act* for disposition of Ministers' Office records.

"To maintain official records as a key asset of government, we need to take a proactive approach to managing them well, and to providing convenient public access," says Wilson ■

Summaries

Investigation I93-095P

An individual was concerned that the Workers' Compensation Board (the Board) had disclosed her entire claims file, which included her medical information, to her employer.

The individual stated that because some of the documents, which contained her medical information, had been incorrectly filed in her correspondence file, they were disclosed to her employer before she had the opportunity to object, as permitted by the *Workers' Compensation Act (WCA).*

The file in question included three memos written by a Board claims adjudicator, a copy of the adjudicator's "Summary of Prior or Subsequent Claim," and a report from a walk-in clinic.

Under section 71(2) of the *WCA*, where there is an issue in dispute, the Board can give the employer access to records the Board considers relevant. However, section 71(5) provides that before doing so, if the records are medical reports or opinions, the Board must notify the worker and give her/him an opportunity to object.

With respect to the memos and the summary written by the adjudicator, the IPC agreed with the Board that these memos could not be considered medical reports or opinions since these documents were not written by a medical practitioner.

The memos were about the complainant's request for a change of doctors, and the "Summary of Prior or Subsequent Claim" gave the background and status of her compensation claim.

However, it was the opinion of the IPC that the report from the medical practitioner at the walk-in clinic was a medical report. This view was supported by a decision of the Workers' Compensation Appeals Tribunal which had addressed the walk-in clinic report. The decision stated in part that "... the Board inadvertently sent the employer a medical report from a medical walk-in clinic."

The IPC found that the disclosure of the walk-in clinic report to the complainant's employer was not in compliance with section 42 of the *Freedom of Information and Protection of Privacy Act.*

The IPC recommended that in order to prevent any inadvertent disclosure of medical reports or opinions to employers in the future, the Board should remind all staff to ensure that incoming documents are carefully reviewed before filing.

CONTINUED ON PAGE 6

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I am a Freedom of Information and Privacy Co-ordinator and I need some advice about whether or not to release information under the* Freedom of Information and Protection of Privacy Act *and the* Municipal Freedom of Information and Protection of Privacy Act *(the* Acts*). Can the Information and Privacy Commissioner/Ontario (IPC) help?*

A: The IPC is not in a position to give you advice on how to deal with requests under the *Acts* because we may be asked to review your decision in an appeal or compliance investigation. The Commissioner ensures individual's rights are protected under the *Acts*, and provides an independent review of requests from people who have been denied access to government information, or who feel their personal information has not been protected by the government.

The Freedom of Information and Privacy office of Management Board Secretariat can help institutions, by providing training, legal, policy and operational advice.

The Freedom of Information and Privacy office of Management Board Secretariat can be reached at (416)327-2187.

Appeal Process Streamlined

The IPC considers timely access to information critical to the principles of the legislation.

THE SOONER THE BETTER IS THE VIEW OF THE people of Ontario when it comes to access to information under freedom of information legislation.

In response to the public's demand for high-quality and timely service, the IPC has been working toward streamlining the appeal process and subsequently decreasing the time it takes to process an appeal. Regular client surveys to monitor progress have been part of the process.

The IPC began these changes in 1992, when the agency announced that it would be making refinements to the appeal process, and that it would be implementing these changes in phases. At the time some appeals were taking a number of months to resolve.

Phase one was introduced in October 1992, and applied to all institutions covered by the *Acts*. The refinements introduced during this phase increased short-term efficiency and improved service within the IPC.

The IPC Library will be featured in the next issue.

Phase two began in January 1993 and continued through to March 1995. During this period, the IPC invited 14 selected provincial and municipal institutions to participate in an Appeals Pilot Project, which was established to improve client service by further refining the appeal process.

The institutions participating in the Appeals Pilot Project were asked to help meet an objective outlined in the IPC's Strategic Plan which requests that 95 per cent of all appeals be resolved within four months. Through the pilot project, it was found that a great majority of appeals could be successfully resolved within this time frame. Many appeals were processed well before this deadline.

This four-month objective was met through strict adherence to established time lines by all those participating in the Appeals Pilot Project, and the adoption of a computer tracking system by the IPC to closely monitor all appeals moving through the system.

Based on these results, a four-month time-based process will apply to all appeals received by the IPC commencing April 1995. The IPC is looking to gain the support of the institutions in adhering to these guidelines. As they have done in the past, the IPC will continue to advocate mediation as the least labour-intensive means of resolving appeals.

The IPC considers timely access to information critical to the principles of the legislation. It helps ensure government accountability, particularly since the value of information often diminishes over time.

In its Three-Year Review of the *Municipal Freedom of Information and Protection of Privacy Act*, the Standing Committee also expressed concern about delays in the processing of appeals. The report stated that the Committee would evaluate the IPC initiatives aimed at shortening the process before considering statutory time limits.

Information Highway Principles

Access and Privacy Principles for the Information Highway

THE IPC HAS SUBMITTED A SERIES OF ACCESS AND privacy principles to the Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada for use in their consultations on the development of the information highway in Canada.

The purpose of these principles is to ensure that access and privacy are considered early in the development of the information highway, rather than once the infrastructure of the information highway has been firmly established.

The IPC was concerned that if access and privacy principles were not addressed the public may not use the new technologies to their fullest. Consequently, they made the principles general enough so they could be used by both the public and private sectors.

These principles were written and presented to the Ontario Library Association's Coalition for Public Information in the summer of 1994. The coalition is concerned that both the voice of the public and industry be considered in the development of the information highway.

Since then, the coalition has included the access and privacy principles in a document called "Future-Knowledge: A Public Policy Framework for the Information Highway" which will, upon completion of the consultations with the public, be submitted to the Information Highway Advisory Council.

This year, the IPC also included the principles in a discussion paper presented to the Information Highway Advisory Council called "Access, Affordability and Universal Service on the Canadian Information Highway."

The following is a short summary of the access and privacy principles for the information highway:

Access Principles

1. Universal and equitable access should be the most important feature.

2. Access should be promoted through public education and training.

3. The implications for access to information should be considered before introducing or regulating any new technology or service.

4. The information highway should be recognized as an opportunity to enhance access to information of interest to the public.

5. Initially the information highway should not replace existing methods of accessing services and information.

Privacy Principles

1. Privacy should be respected and protected.

2. Before introducing any new technology or service on the information highway, the impact on privacy should be considered.

3. The collection, retention, use and disclosure of personal information should be governed by policies and procedures based on fair information practices, established in law.

4. Information technologies or services on the information highway that threaten to compromise privacy should be accompanied by appropriate measures to maintain privacy at no additional cost to the individual.

5. Public education and training should be provided about any security/privacy issues surrounding the use of the information highway.

6. Personal information should be protected through the implementation of appropriate security safeguards.

7. A means should be established to handle complaints and to provide redress for improper use of personal information.

For a copy of "Access and Privacy Principles for the Information Highway," please contact Lisa MacKenzie in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

Summaries

CONTINUED FROM
PAGE 3

Order M-452

A Town received a request for the records detailing cellular phone costs incurred by its Administrator for the years 1992 and 1993. The requester asked that the detailed listing of the chargeable calls included with each invoice be provided.

In response, the Town provided access to the portion of the invoice which showed the total amount billed for the month (the account summary), with the exception of the account summary issued in September 1992.

The Town indicated that it did not have custody or control of the list of chargeable calls or the account summary for September. The requester appealed this decision.

The sole issue in this appeal was whether the Town had custody or control of the records.

The Town submitted that it never had possession of the records, as it was agreed between the Town and the Administrator that he was not required to provide the Town with a detailed breakdown of the chargeable calls as part of the invoice approval process.

The Town argued that, while the records were held briefly by the Administrator, it was not as part of his official capacity and the records were, therefore, never in an employee's possession.

The account summaries disclosed to the appellant showed that the phone was leased in the Town's name and that the monthly invoices were sent to the municipal building to the attention of the Administrator. The Administrator was authorized to approve payment of the amount indicated in each account summary, and forwarded the account summary portion of the invoices to the Town's Treasury Department, which then remitted payment in full.

It was indicated by the Town to the appellant that the account summary issued in September 1992 had been discarded by the Administrator because an overpayment on the account had been made. As no money was owed, the account summary was not turned over to the Treasury Department and was discarded with the rest of the bill.

The Town asserted that it never had a right to possess the records prior to their disposal. The Town submitted that it considered the detailed listing of chargeable calls to be the personal information of the Administrator and, as such, the Town passed a resolution which stated that the Administrator was not required to submit this information to the Town.

By agreeing that the records of calls made and received were the personal information of the Administrator, the Town stated that, by inference, he could do with them what he wished. The Town submitted that the records did not relate to the Town's mandate or function, that it had never relied on the records, and that the records had never been integrated into the other records kept by the Town.

The IPC found that the responsible administration of public funds is central to the mandate and function of every public institution and the Town had an obligation to properly manage its record holdings in accordance with the intent of the *Act*. The only limits on the Town's custody or control of the requested records had been imposed by the Town itself. The IPC found that the Town did have the requisite degree of control over the records within the meaning of the *Act*.

The IPC ordered the Town to obtain copies of the records from the cellular phone company and to respond to the request without recourse to any fee ■

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PERSPECTIVES
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TOM WRIGHT, COMMISSIONER

RD/AD – in action

BOTH THE PUBLIC AND GOVERNMENT CAN benefit from RD/AD. Routine disclosure (RD) and active dissemination (AD) of information promote more efficiency and more openness in government. They can eliminate red tape and reduce spending, as well as enhance service to the public.

Routine disclosure does this when a request for a general record can be granted routinely either inside or outside the FOI process. Active dissemination occurs when information or records are systematically released by an organization. There is no waiting for a special request; just a pre-planned periodic availability of the information.

Cost effectiveness is the name of the game these days. Especially in terms of government spending. This is why routine disclosure and active dissemination of government information is being encouraged in Ontario. The public is better-served and government can meet the public's growing demand for more and more information in a cost-effective manner.

CONTINUED ON PAGE 6

Voice mail can be an effective communications tool. However, it's not as private as we'd like to think. See article, page 2.

Voice mail: who's listening?

Voice mail isn't as private as we'd like to think ...

EVER TRY TO CALL SOMEONE, ONLY TO BE PUT on hold by a well-meaning but over-worked receptionist? Ever get tired of playing telephone tag? Most of us have. That's why voice mail has become so popular. We can leave longer, more complex or even more personal messages than we might with a receptionist. With voice mail, far less time is wasted on hold, returning calls, paging or talking on the phone.

So, what's the hitch? Voice mail isn't as private as we'd like to think. It can be monitored by third parties at any time of the day or night. Also, our messages can be tampered with or forwarded to any number of people. All this, without us ever knowing.

Voice mail can be an effective communications tool. However, it is important for voice mail users to be aware of the privacy implications inherent in such systems and for organizations to have policies and procedures to ensure privacy and confidentiality. With this in mind, the Information and Privacy Commissioner has developed a set of privacy protection principles for organizations to consider when designing and using voice mail systems.

Voice mail systems vary both in terms of types of technology and how they are used. Therefore, it isn't possible to develop one set of guidelines that would be applicable to all organizations. These principles are intended to provide a framework for developing and implementing specific privacy protection policies for the use of voice mail in an organization.

An organization's voice mail guidelines should be based on fundamental privacy principles, including:

- The privacy of voice mail users should be respected and protected;
- Employees should receive proper education and training regarding voice mail and the security/privacy issues surrounding its use;
- Each organization should create an explicit policy which addresses the privacy of voice mail users; and
- Voice mail systems should not be used for the purposes of collecting, using, retaining and disclosing personal information, without adequate safeguards to protect privacy.

Voice mail can be an effective tool to ease communication and the exchange of information, both within organizations, and between organizations and the outside world. But without policies and procedures to protect privacy and confidentiality, the advantages of voice mail may come at a very high price. A commitment to protecting voice mail privacy and confidentiality may not only promote effective communication, but enhance the work environment by letting individuals know that their rights in the workplace are considered to be important enough to warrant protection. In addition, implementation of a policy will help to protect the privacy of individuals whose personal information is collected via voice mail.

For further information, please see the IPC's paper *Privacy Protection Principles for Voice Mail Systems.* You can request a copy from the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

RD/AD in action — we want to hear from you!

We want to hear your access-related stories. How do you promote easier access to government information in your organization? Have a great access-related policy? We want to hear about it.

Contact Carol Markusoff , in the IPC Policy department, 80 Bloor Street West, Toronto, M5S 2V1; telephone (416) 325-9172 or 1-800-387-0073.

Data Sharing Survey

Data sharing involves information that has been collected indirectly ...

SHARING PERSONAL DATA BETWEEN TWO organizations runs counter to two of the most fundamental principles of data protection — that personal information should only be collected directly from the individual to whom it pertains and should only be used for the purpose for which it was collected.

Data sharing respects neither of these principles. Data sharing involves information that has been collected indirectly, and used for a purpose which may not have been intended at the time of the original collection. This may lead to the loss of an individual's control over his or her own personal information.

Given the privacy implications of the issue, the Information and Privacy Commissioner recently initiated a study into data sharing within the Ontario government. Aware that data sharing was taking place, yet not knowing its extent, the IPC decided to conduct some research.

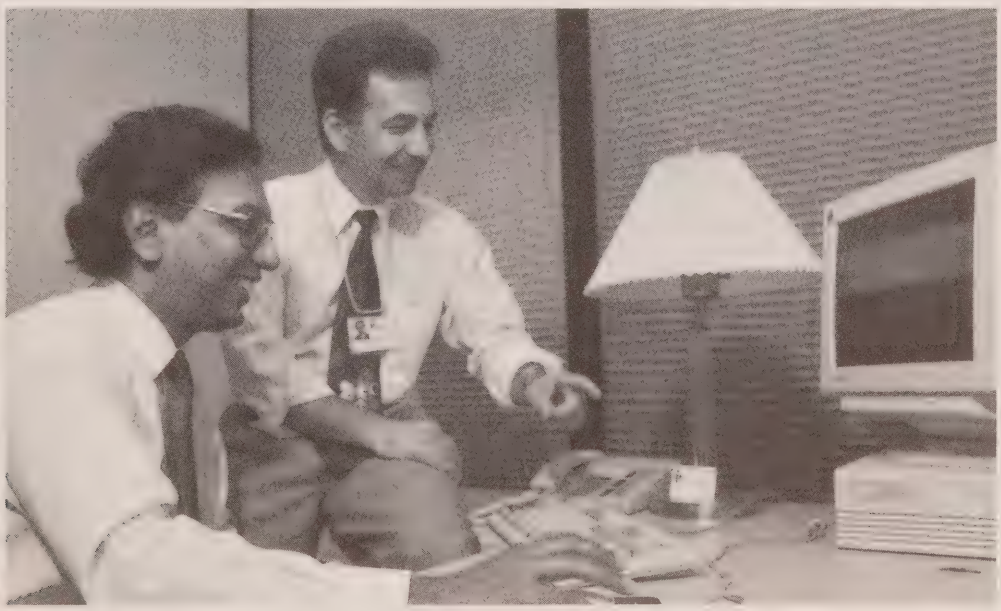
Last fall, surveys were sent to a sample of provincial ministries, agencies and boards designated as institutions under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The responses of the 62 per cent who completed the survey were analysed and a number of findings and recommendations were made.

One significant finding showed that while the majority of organizations indicated that they had written agreements to support their data sharing activities, most of these organizations did not provide samples of these documents to the IPC.

Written data sharing agreements are vital. Not only do they clarify the rights and obligations of all parties, they also help to ensure compliance with the privacy provisions of the *Act*. With this in mind, the IPC developed a second phase to the data sharing study.

When complete, Phase II of the IPC study will present a model data sharing agreement and set out guidelines for provincial and municipal organizations to consider when planning to share data with other organizations.

For more information, or for a copy of the *IPC Survey on Data Sharing in the Ontario Government*, contact the IPC Communications department at (416)326-3952 or 1-800-387- 0073. Phase II of the IPC study into data sharing will be complete by the end of the year.



Noel Muttupulle and Nick Magistrale discuss findings from the IPC's Data Sharing Survey.

Summaries of Policy Papers Available

SUBSTANTIAL MEDIA COVERAGE HAS PROMPTED public demand for IPC policy papers. The papers which highlight access and privacy issues, both within and outside the jurisdiction of the *Acts*, answer many of the public's questions and play an important role in public education.

Pleased with the public interest, yet anxious to keep costs down, the IPC is introducing a new series of *IPC Practices* which summarize policy papers. Until now, *Practices* have focused on procedural advice on appeal and compliance issues. The new one- to two-page publications are written in plain language and are available to anyone interested in a particular subject. The following *Practices* are available from the IPC Communications department:

- Privacy and E-Mail
- Privacy and Call Display
- A Consumer's Guide to Privacy in the Market Place
- Routine Disclosure/Active Dissemination of Government Information
- Privacy Tips for Businesses

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I keep receiving junk mail. How did they get my name and how do I stop getting this unwanted mail?*

A: If you are receiving "junk mail", you've probably been placed on one or more mailing or telemarketing lists. Perhaps you thought nothing of providing your employer's name when applying for membership to a video or health club. When you joined a book club or added your name to a mail-order catalogue list you initiated a potential avalanche of junk mail, and provided another bit of information for a data file somewhere that might be sold or rented.

To remove your name from such lists, contact the Canadian Direct Marketing Association (CDMA) by calling (416) 391-2362 or write to:

Do Not Mail Service
c/o Canadian Direct Marketing Association
1 Concorde Gate, Suite 607
Don Mills, Ontario
M3C 3N6

This will ensure that your name will be kept off member mailing lists for up to three years. After that you should re-register. Keep in mind that only member companies of the CDMA are covered and that it takes three to four months for the removal requests to take effect.

A complaint can be made to the CDMA if your name isn't pulled.

Summaries

"Summaries" is a regular column highlighting significant orders and compliance investigations.

Order M-583

The appellant, on behalf of a taxpayers' organization, asked a Board of Education (the Board) for access to expense-related information and a copy of the Board's alpha cheque register for a specific period.

The Board provided a fee estimate for the materials. The Board was prepared to disclose the records upon payment of the fee.

The IPC upheld the Board's revised fee estimate and ordered the Board to delete any information about identifiable individuals who were involved with the Board in other than a business, professional or employment capacity.

In a postscript, Commissioner Tom Wright agreed with the appellant that taxpayers should have the right to scrutinize the employment-related expenditures of public officials. "I believe it's time for all government organizations to make expenditure-related information routinely available to the public. Such information should include the expenses incurred by senior officials for which they will be reimbursed by the organization. In my view this "routinely available" approach has equal application to all general records held by government."

I95-013M

The complainants were the parents of a Board student who had been trying to resolve a series of altercations between their child and other students. The father wrote to the Board's Director of Education, requesting a meeting, and enclosed a series of questions related to the Board's responses to the parents' concerns. The letter specifically requested that the enclosed information not be distributed without the father's permission.

The questions were subsequently disclosed to Board staff following the Director's meeting with the parents, and written answers were provided to the parents. The parents complained that the Director's actions had breached the municipal *Act*.

The IPC investigated and found that the Director and parents had left the meeting with differing views of what was to be done about the questions. However, it was found that the disclosures had been made in compliance with section 32(c), since the personal information had been obtained and disclosed for the same purpose - to bring the complainant's concerns to the attention of Board staff, and resolve the issues.

IPC decisions - quick 'n easy

Ever wonder if there's an existing IPC decision that deals with the same issues you've been wrestling with? And if the decision exists, how do you get your hands on it?

Other than the tried-and-true methods of looking-up your topic in the IPC's *Subject Index* or Management Board's *Annotation*, there's a new way to get the information. IPC decisions can now be accessed by computer, through "QUICKLAW". The IPC database is called OIPC.

QUICKLAW, Canada's largest legal database service, now has all IPC orders as well as IPC compliance investigations from June 1, 1993. Updated weekly, the service offers software subscribers a quick and easy way to find orders, investigations, paragraphs, topics or words that may help with your research.

For further information on QUICKLAW, call QL Systems Limited at 1-800-387-0899.

RD/AD – in action

CONTINUED FROM PAGE 1

The IPC encourages government organizations to take a common sense approach towards establishing RD/AD practices. In April 1994, the IPC and Management Board Secretariat (MBS) jointly released a policy paper entitled *Routine Disclosure and Active Dissemination.* Produced in conjunction with a working group of access and privacy experts from municipal and provincial organizations, this report outlined the advantages to government-promoted RD/AD. It also made eight suggestions to assist FOIP Co-ordinators determine which records could be subject to RD/AD.

The following are among the suggestions:

- Look for trends in the type of information requested on a regular basis;
- Review any class of record that is released regularly, without exemption;
- Determine information that must be made available because of a statutory requirement. (For example, the *Assessment Act* requires that certain assessment information be made available to the public); and
- Evaluate all newly-created records to determine if they could be subject to RD/AD.

This year, the IPC and MBS are once again working on another joint RD/AD project. This time the focus is on making RD/AD more of a daily practice in government organizations. With the help of a working group composed of Co-ordinators and record managers, we've talked to organizations and found some excellent examples of how RD/AD is working across Ontario. By next spring, we hope to share some of these real-life testimonials!

After all, why re-create the wheel? If another ministry or municipal government organization has already developed a good access-related strategy, why not borrow some ideas for use in your own organization? Ultimately, and in the spirit of the *Acts*, unless there is a statutory requirement or reason not to release the documentation, RD/AD of general records should become the norm.

If you'd like to share an access story of your own, or if you'd like a copy of the paper *Routine Disclosure and Active Dissemination*, please contact the IPC Communications department at: (416) 326-3952 or 1-800-387-0073.

Coming up next issue:

The spring issue of *IPC Perspectives* will feature highlights from the fall access and privacy workshop. Also, watch for an update on the first public inquiry held under Ontario's access and privacy legislation. Details will be made available on the hearing and ruling.

IPC
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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

TOM WRIGHT, COMMISSIONER

Working Towards Solutions

"Ontario has a track record to be proud of… but what does the future hold in the current cost-cutting, downsizing environment?" Last November, over 200 FOIP Co-ordinators attended the annual access and privacy workshop with such thoughts in mind.

The popular workshop *Working Towards Solutions,* held on November 15 and 16, was jointly sponsored by the Information and Privacy Commissioner/Ontario (IPC); the Freedom of Information and Privacy Office, Management Board Secretariat (MBS); and the Association of Municipal Clerks and Treasurers of Ontario (AMCTO).

Commissioner Wright's keynote speech on November 16 addressed the interests and concerns of both the public and freedom of information and privacy Co-ordinators across the province. He commented on the extraordinary challenges of today's environment – one driven by enormous pressure to both reduce costs and improve customer service. He also illustrated how well the system is working in Ontario.

"Ontario has a track record to be proud of. As my latest Annual Report indicates, every year provincial government organizations have replied to the majority of requests

CONTINUED ON PAGE 6

"Working Towards Solutions" – workshop panelists enjoy an informal moment. From left to right: Jane Anderson-Renton, Assistant Commissioner Ann Cavoukian and Pierrôt Péladeau.

Summaries

"Summaries" is a regular column highlighting significant orders and compliance investigations.

Order M-618

On October 18, 1995, the IPC issued a significant order on the subject of frivolous or vexatious requests. The order arose from a number of requests for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) made to various Police Services Boards since early 1993.

Following public hearings, Commissioner Tom Wright declared the requester involved, Robert Riley, to be engaged in a course of conduct that constituted an abuse of the processes of government institutions and the Commissioner's office under the *Act*. He also invoked his authority under section 43 (3) of the *Act* to impose conditions on processing any requests and appeals from Mr. Riley now and for a specified period into the future.

The Commissioner indicated this order puts all participants in the processes under both the provincial and municipal *Acts* on notice that attempts by any party to abuse those processes will be dealt with firmly and fairly.

In response to a number of requests made by Robert Riley and another individual, the Boards and Chiefs of Police of London, Metropolitan Toronto, Sarnia and Windsor applied for a court injunction against the requesters and the Information and Privacy Commissioner (the IPC). The application, filed in December 1994, claimed the requests were "frivolous, vexatious and...an abuse of the right of access provided in the *Act*."

...the Commissioner concluded that ... a crucial distinction exists between a statutory right and the means available to realize it.

Some of the requests included the number of washroom facilities and cleaning schedules in police departments. Requests were also made for detailed listings of all arrests made or charges laid by Metro Toronto Police over a five-year period, as well as a detailed listing of all arrests made over a 10-year period by London Police.

The court application was put on hold February 9, 1995 so that the issues raised in the application could be considered by the Commissioner. On May 9, 1995, the Commissioner issued a notice of inquiry on the issue of frivolous or vexatious requests. In preparation for the inquiry, the Commissioner's office invited applications for intervenor status from various government institutions, individual appellants whose appeals raised similar or related issues involving alleged abuses of process, the media and other potentially interested parties. The oral hearing stage of the inquiry took place on August 29 and 30, 1995.

Following a full review of the matter, the Commissioner concluded that while the *Act* does not address the question of an institution's obligation to respond to frivolous or vexatious requests, a crucial distinction exists between a statutory right and the means available to realize it. "While Mr. Riley in principle may have an unlimited right of access to government information, subject only to the exemptions set out in the *Act*, he does not have unlimited access to the processes available to secure that right," the Commissioner wrote.

The conditions imposed in the order are designed to maintain the right of access to information while preventing abuse of the process. The conditions include:

- the number of requests and/or appeals Mr. Riley can have at any one time over the 12 months following the order, until December 17, 1996, is limited to five;
- no individual government organization will be required to process any more than one request and/or appeal from Mr. Riley at a time, to a maximum of four requests and/or appeals during the year;
- after the 12 months, any person or organization affected by the order can apply to have it varied; otherwise its terms and conditions will continue from year to year.

Summaries
CONTINUED

I95-040P

The complainant, a student at a college of applied arts and technology, was concerned that the college had given a copy of his class schedule and his photograph to an employee of a department store without his consent.

The department store employee had gone to the college after speaking to the police regarding a person she thought was following her. According to the college, the police advised her that this person (the complainant) was a student of the college and that she should obtain his photograph to help the store's security staff, should he return to the store.

The college stated that they gave the complainant's class schedule and photograph to the store's security staff (not the employee) in accordance with section 42(g) of the *Act*, i.e. its disclosure was to an institution or law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding....

The IPC determined that the store was not an "institution under the *Act* and while the store's security service was involved in providing security it was not a law enforcement agency as this term is defined in the *Act*. It was the IPC's view that a law enforcement agency is one which has a primary law enforcement role and would include such traditional law enforcement bodies as police services boards. If the college's disclosure had been to the police to aid in their investigation, it would have been in compliance with section 42(g).

The IPC recommended that the college take steps to ensure staff are reminded of the disclosure provisions of the *Act*.

All IPC orders, as well as investigations from June 1, 1993, are available from Publications Ontario at (416) 326-5300 or 1-800-668-9938. Both orders and investigations are also available through the QUICKLAW database; or on the IPC's World Wide Web site at http://www.ipc.on.ca

Freedom of Information and Privacy Co-ordinators share ideas at the fall workshop.

1995 — The Year in Review

The following are some of the main events of 1995, as they relate to freedom of information and protection of privacy.

JANUARY 1

An amendment to the *Municipal Act* comes into effect requiring municipal councils to adopt procedural by-laws to ensure their meetings are open to the public.

FEBRUARY 24

Tom Wright, Ontario's Information and Privacy Commissioner gives a presentation to the B.C. freedom of information and privacy community entitled: "Our Experiences in Ontario" while attending the Pan Pacific Conference.

MARCH

The IPC releases *Access and the Canadian Information Highway – A Submission to the Information Highway Advisory Council Secretariat* in response to the discussion paper entitled *Access, Affordability and Universal Service on the Canadian Information Highway.*

MARCH

The IPC releases *Eyes on the Road: Intelligent Transportation Systems and Your Privacy.*

MARCH

Darce Fardy becomes Nova Scotia's first Review Officer. Nova Scotia's *Freedom of Information Act* gives its Review Officer only advisory powers, but like the federal Access Commissioner, Fardy can take court action if his recommendations are disregarded.

MAY 15

As a weapon against violence and vandalism, a few large urban school boards in Canada install surveillance cameras in schools.

JULY 7

Ontario ends the use of photo-radar.

AUGUST

The Information and Privacy Commissioner/Ontario, together with the Dutch Data Protection Authority, release a joint report entitled *Privacy Enhancing Technologies: The Path to Anonymity.*

AUGUST 15

The IPC tables its 1994 Annual Report to the Legislative Assembly.

AUGUST 29 & 30

The first public inquiry held under Ontario's access and privacy legislation examines the issue of frivolous or vexatious requests for information.

OCTOBER 1

Alberta's *Freedom of Information and Protection of Privacy Act* comes into effect.

OCTOBER 18

Commissioner Wright issues Order M-618, on the matter of frivolous or vexatious requests.

OCTOBER 25–27

The IPC hosts the "Annual Meeting of Federal and Provincial Access and Privacy Commissioners" in Toronto.

OCTOBER 31

The IPC releases *Privacy Protection Principles for Voice Mail Systems.*

NOVEMBER 16

Commissioner Wright gives the keynote address at the annual workshop "Access and Privacy: Working Towards Solutions."

DECEMBER

Commissioner Wright presents two submissions to the Standing Committee on General Government regarding Ontario's Bill 26 (omnibus).

DELETE

THIS

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Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *I've been told that as a consumer I should take control of my personal information and apply my own code of "fair information practices" to all my commercial transactions. What are fair information practices?*

A: The spirit of fair information practices is rooted in the 1980 *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data,* issued by the Organization for Economic Co-operation and Development (OECD) in September 1980. These guidelines provide a helpful overall way of thinking about privacy and are the foundation of most privacy protection legislation and privacy codes throughout the world.

Fair information practices are divided into three general categories. Although these categories are designed for collectors of personal information, knowledge of them can also help the consumer handle potential invasions of privacy in the marketplace. Remember, information collectors should:

- only collect accurate and pertinent information during any transaction;
- grant individuals access to their personal records; and
- limit access to personal data by third parties.

Learn about your right to privacy. Be aware. Exercise a little caution, a little curiosity and guard your personal information. By applying your own code of fair information practices to daily transactions, you will be better able to protect the privacy of your own personal information.

For further information on how to protect your privacy in the marketplace, see the *IPC Practices* entitled "Privacy Alert: A Consumer's Guide to Privacy in the Marketplace". For a copy, call Irene in the IPC Communications department at (416) 326-3952 or 1-800-387-0073 or see the IPC's World Wide Web site at http://www.ipc.on.ca

Practising what we preach

The IPC advocates routine disclosure and active dissemination of government-held information. This should come as no surprise. The news is that recently we've taken steps of our own to promote access to information.

In November, we launched our own Web site on the Internet as a research and information tool. The site includes:

- a listing of all our orders, policy papers and investigation reports from June 1, 1993;
- a section on frequently asked questions on access and privacy, summaries of our policy papers, text of our publication *IPC Practices* and the most current *IPC Perspectives*;
- the text of both *Acts*, as well as a summary of each; and
- indices to help identify orders by subject area and section of the *Acts*.

The IPC's address on the World Wide Web is: http://www.ipc.on.ca.

Working Towards Solutions

CONTINUED FROM PAGE 1

within 30 days – and have answered more than eight in 10 requests within 60 days. Local government organizations have an outstanding record too – responding to about 90 per cent of requests within 30 days, every year they have been covered by the municipal *Act*. These impressive response rates took place against a backdrop of an increasing volume of requests....

There is also good news on the privacy side. More than two-thirds of privacy complaints to the IPC were settled voluntarily in 1994 – often through mediation.

When a case proceeds to a formal investigation report, we routinely follow up on the recommendations made. In 1994 we followed up on 70 recommendation from our investigation reports, and found that **all** of them had been implemented satisfactorily by the organizations involved....

To improve cost-effectiveness, I believe it is imperative to do everything possible to make use of the *Acts* as a matter of last resort.... For some time now, we have been advocating routine disclosure and active dissemination (RD/AD) of government information, as customer-focused alternatives to the formal access process.... I believe RD/AD approaches may well hold the key to the continued success of our freedom of information system, in a climate of diminishing public sector resources. Put simply, routine disclosure and active dissemination make access to information faster, easier and cheaper.

RD/AD ... need not be high-tech. For example, I know of a mayor of a sizeable Ontario city who puts a copy of all his expense accounts in a public file, available to anyone who asks for it. This is a low-tech, inexpensive way to make information accessible.

But it is the attitude demonstrated by this mayor toward the public's right to access information that is the key to achieving a vibrant, cost-effective FOI system in Ontario. This official has thought about the public's right of access to information, as well as the type of information in which the public is likely to be interested....

The time has come, then, to move beyond the conventional wisdom – to bring an open mind as well as a dedicated heart to our efforts to advance the public interest in the information age. It is a time for creativity and innovation as we go about the day-to-day realities of our business – expediting access to information, safeguarding privacy, serving the public – and doing it all in a cost-effective fashion.

I have every confidence that through the combined commitment of government organizations and the IPC, Ontarians will continue to benefit from a freedom of information and protection of privacy system that is second to none."

For a copy of Commissioner Wright's complete address, please contact Irene in Communications at (416) 326-3952 or 1-800-387-0073. The speech is also available from the IPC's World Wide Web site at http://www.ipc.on.ca.

Coming-up next issue:

RD/AD at work – the IPC shares some access-related ideas from organizations.

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TOM WRIGHT, COMMISSIONER

Towards a Culture of Openness

HOW DOES A GOVERNMENT ORGANIZATION respond to the increasing demands of the public? How does it make access to information better, quicker and cheaper in a time of shrinking financial resources? Eleven government organizations show how they meet the challenge in a recent paper jointly released by the Information and Privacy Commissioner/ Ontario (IPC) and Management Board Secretariat (MBS).

Enhancing Access to Information: RD/AD Success Stories describes how these government organizations apply fresh approaches through routine disclosure and active dissemination (RD/AD).

Routine Disclosure and Active Dissemination are defined as follows:

Routine disclosure (RD): occurs when a request for a general record can be granted routinely either inside or outside of the formal access process prescribed by the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act.*

Active dissemination (AD): occurs when information or records are periodically released (without any request) pursuant to a specific strategy for release of information.

RD/AD advances open government and makes access to government information easier and cheaper. How? *Enhancing Access to Information: RD/AD Success Stories* shows how eleven municipal and provincial government organizations in Ontario are currently working towards openness – with great success.

Each access "success story" is unique yet several common elements were identified in interviews which took place between July and November 1995. One of the most striking was the importance of a "positive access mind-set" or a "corporate-wide attitude of openness" within the organization. Another common characteristic was one of strong leadership – leadership that endorses positive and active ways to get information out to the public – leadership that dedicates the necessary staffing resources to develop RD/AD strategies and put them in place.

The paper also gives a list of practical ideas on how government organizations can make RD/AD a part of the day-to-day operations and help foster a culture of openness.

Here are some practical tips:

- Involve staff from all areas of the organization in developing an access strategy.

Helpful hint for protecting your personal medical files.

Obtain a copy of your medical file used by insurance underwriters by writing to the Medical Information Bureau (MIB). The Canadian address is 330 University Avenue, Suite 102, Toronto, Ontario M5G 1R7. Telephone: (416) 597-0590. The MIB is a data bank with medical information that is used by insurance underwriters to check medical histories.

CONTINUED ON PAGE 3

Assessing the Risk

...Directive 8-2 requires that a computer matching "assessment" be submitted to the IPC at least 45 days before the project begins.

COMPUTER MATCHING – CONSIDERING A COMputer matching project in your ministry or agency? If so, have you done your assessment?

What *is* computer matching, you ask? At its most basic, it involves the computerized comparison of two or more data bases of personal information that were originally collected for different purposes. The computer matching program creates or merges files on identifiable individuals regarding various matters of interest. For example, computer matching could identify people enrolled in a number of government programs who receive certain benefits.

Since computer matching can detect persons who may be intentionally defrauding the government, it may be used extensively for law enforcement purposes to identify suspects for a law enforcement investigation. It is evident that computer matching can be an important and beneficial tool for government organizations, however, the privacy concerns associated with such practices are also significant. Without adequate safeguards, computer matching could become an easy means of invading privacy.

Government organizations that are considering computer matching should be familiar with the Management Board Directive 8-2 and Guideline, *Enhancing Privacy: Computer Matching of Personal Information.* It applies to all ministries and agencies covered by the *Freedom of Information and Protection of Privacy Act* (the *Act*). Contact the Freedom of Information and Privacy Coordinator at your provincial organization for valuable assistance in this area.

Once a ministry or agency has the authority under the *Act* to collect, use or disclose personal information for the purpose of computer matching, Directive 8-2 requires that a computer matching "assessment" be submitted to the IPC at least 45 days before the project begins.

The IPC reviews and comments upon each computer matching assessment. The following requirements are mandatory:

- the names of the ministries, agencies or other organizations that will be involved;
- a description of the personal information records, including the number of records that will be matched and the date the match is expected to start and finish;
- the purpose of the computer match and the legal authority for the collection, use and disclosure of personal information required for the match, as well as a description of what will be done with its results;
- the steps to be taken to comply with the following requirements of the *Act*:
  - providing a notice of collection of personal information;
  - recording any non-routine use or disclosure of personal information as required by the *Act*;
  - ensuring that personal information used in the match will be kept secure, confidential and accurate;
- the procedures for notifying individuals who will be directly affected by any action resulting from the computer matching;
- the procedures for verifying any information the match produces; and
- the business case for the computer match.

Each computer matching assessment is reviewed by the IPC to ensure the directive has been followed, thereby balancing effective use of computerized personal information with the privacy interests of individuals.

The Freedom of Information and Privacy Coordinator at your provincial organization can be of valuable assistance to anyone considering a computer matching activity. For further information or policy advice, contact the Freedom of Information Branch at Management Board Secretariat; telephone (416) 327-2187.

FOIP at Queen's

CAN I MAKE AN FOI REQUEST FOR MY UNIVERsity files? It's a frequently asked question. Although universities aren't covered by access and privacy legislation in Ontario, there's good news from Queen's University.

Recently, Queen's University took a giant FOI-step forward by developing its own access to information and protection of privacy guidelines. These guidelines were created to establish access to information and protection of privacy policies which reflect the underlying principles of Ontario's *Freedom of Information and Protection of Privacy Act*, and apply them in a manner appropriate to the University setting.

The guidelines are based on the following principles:

- as a general rule, information contained in University records should be available to members of the public;
- the necessary exemptions from the general principle favouring access should be as limited and specific as possible;
- the collection, retention, use and disclosure of "personal information" contained in University records should be regulated in a manner that will protect the privacy of individuals affected; and
- means should be established for the resolution of disputes concerning access to information and privacy protection matters.

Congratulations to Queen's University for showing leadership in this area! We hope their foresight serves as an example to others. For further information on Queen's access to information and protection of privacy policy and guidelines, contact Don Richan at (613) 545-2378.

Towards a Culture of Openness

CONTINUED FROM PAGE 1

- Study, examine and review FOI requests. Identify trends. Watch for patterns and identify records that can be routinely disclosed outside the formal FOI process.
- Be access conscious when designing forms. For example, where possible, design two-sided forms with disclosable information on one side and personal information on the other – makes for easy photocopying, without having to sever the personal information.
- Use training situations as an opportunity for staff to identify information that can be routinely disclosed or actively disseminated.
- Ongoing staff awareness, orientation, training and education are critical in demonstrating the benefits of RD/AD.
- Think about "partnering" with someone in another government organization to regularly share ideas and gain from each other's experience and expertise.

Ultimately, the most important benefit of RD/AD is that it generates a more open relationship between government organizations and the public they serve. For a copy of *Enhancing Access to Information: RD/AD Success Stories*, contact the IPC at (416) 326-3333 or 1-800-387-0073.

Privacy Profile

by Rob Candy, Freedom of Information and Privacy Co-ordinator, Region of Peel

The following article has been provided by the Region of Peel to assist other institutions in protecting personal information when delivering social services.

UNDER ONTARIO LAW, TO ESTABLISH ELIGIBILITY for social assistance, sole support parents are required to pursue support for their dependent children from the absent parent. Often the whereabouts of the absent parent are unknown to the applicant. Municipalities use many methods to locate these absent parents, including driver's licence searches from the records of the Ontario Ministry of Transportation (MTO). Similar processes are in place to locate those past recipients of social assistance who are required to repay all or part of their assistance to the municipality, whether by reason of inaccurate or fraudulent declaration of information, or due to their having signed an assignment to repay the amount issued. In both cases (absent parents and required repayments), when municipal staff secure an address for an individual in question, attempts are made to establish contact, generally by mail.

When conducting these searches, it is crucial that staff confirm the identity of the individual prior to attempting contact. Insufficient screening processes could result in a letter, identifying Individual A, being sent to the address of Individual B. As names may be similar or even identical, there is a likelihood of the mail being opened by Individual B. This could mean inadvertent disclosure of personal information by the municipality (section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*), as well as failure to ensure the accuracy of personal information before it is used (section 30).

To avoid such errors, systems should be established within each municipality to screen out inaccurate matches. In reviewing information received from MTO or other sources, staff should be trained to look beyond simple comparisons of first and last names and to review for corroborating matches on personal identifiers, including date of birth, sex, height and address history. Staff must know to look beyond the immediate and to obtain advice from supervisors or other experienced co-workers when in doubt.

Peel Region staff have developed procedures to ensure that personal identifiers are properly matched during address searches. They are as follows:

- The control clerk forwards the drivers' license search form to MTO
- MTO information is received back by the support clerk
- The support clerk matches the MTO information with the request for the search
- The support clerk highlights on both forms the areas of match, i.e. last name, first name, address history, date of birth. A minimum of two matches are required.
- If a match is determined, the support clerk writes a request on the file for the control clerk to change the address in the Comprehensive Income Maintenance System (CIMS)
- The control clerk receives the request and is responsible for ensuring that the information matches on at least two items (a second control measure)

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Updated brochures!

The IPC has updated its brochures and pocket guides to reflect the new fees for making an information request or appeal under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act.* The publications include:

- *Access to Information Under Ontario's Information and Privacy Acts*
- *Your Privacy and Ontario's Information and Privacy Acts*
- *The Appeal Process and Ontario's Information and Privacy Commissioner*
- *Pocket Guides to the provincial and municipal Acts*

For copies, please contact the IPC at (416) 326-3333 or 1-800-387-0073.

Summaries

"Summaries" is a regular column highlighting significant orders and compliance investigations.

Order P-1023

The Ministry of Health received a request for all draft and final reports of a quality assessment review of its Audit Branch (the Branch). The Ministry granted partial access to the nine records that were located. Access was denied to two versions of a draft appendix, pursuant to section 21(1) (invasion of privacy) of the *Freedom of Information and Protection of Privacy Act.*

It was the appellant's position that the requested records primarily describe the operational status of a unit within the Ministry. Any personal information contained in the record was incidental to the focus of the majority of the information contained in it. The Ministry submitted that although the records did not contain the name of any individual, it was reasonable to expect that the individual holding that position could be identified.

It was the IPC's view that while any audit of a government department would likely impact on the individuals working in that department, either favourably or unfavourably, in these situations, an employee could not expect to maintain complete anonymity with respect to the results of this kind of review.

The Ministry was ordered to disclose the information in the records, less some personal information that was not at issue in the appeal.

Investigation I95-030P

The complainant was a former College student. While at the College, he had been overheard threatening to kill anyone who tried to stop him from reaching his career goal. He apologized for this behaviour, but later wrote to a College instructor complaining that he was being harassed and discriminated against.

The complainant was also a patient at a psychiatric institute. After he had left the College, when he was reviewing his psychiatric file, he found a letter from the College to the institute requesting a "risk assessment" of his potential for violence. The complainant believed that the College's actions in obtaining the risk assessment breached the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The IPC found that the College's collection of the complainant's personal information was not in compliance with any of the conditions set out in section 38(2) of the *Act. The Occupational Health and Safety Act* did not expressly authorize the collection of the risk assessment. The collection was not used for the purposes of "law enforcement". Although it was accepted that dealing with pending or existing litigation was a lawfully authorized activity, the IPC considered the risk assessment was not "necessary" to the proper administration of this activity.

The IPC recommended that the College take steps to ensure that personal information is not collected except in compliance with the *Act.*

All IPC orders, as well as investigations from June 1, 1993, are available from Publications Ontario at (416) 326-5300 or 1-800-668-9938. Both orders and investigations are also available through the QUICKLAW database or on the IPC's World Wide Web site at http://www.ipc.on.ca

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Privacy Profile

CONTINUED FROM PAGE 4

- The control clerk creates a computer input sheet with the address change and inputs it into CIMS
- If any doubt exists about the matching process, a supervisor is consulted.

Following procedures such as these will assist municipalities to ensure privacy in the delivery of social assistance services. To find out more about Peel's procedures, contact Rob Candy, Freedom of Information and Privacy Co-ordinator, (905) 791-7800, ext. 4717.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *What is data sharing and what's the difference between data sharing and computer matching?*

A: Data sharing is the exchanging, collecting or disclosing of personal information between two or more organizations. It involves personal information that has been collected indirectly, and used for a purpose which may not have been intended at the time of the original collection.

Data sharing happens when organizations share or compare personal information in any format. For example:

- a hand written list with another hand written list;
- a hand written list with a computer database; or
- a computer database with another computer database.

Computer matching is basically a sub-set of data sharing. It involves sharing of information from two or more electronic databases of information. The computer matching program merges files on individuals to identify specific areas and creates another electronic file.

Q: *As a government organization, what are the obligations under the* Acts *with regards to data sharing and computer matching?*

A: Both provincial and municipal government organizations should complete a data sharing agreement when considering any data sharing activity. The agreement clarifies the rights and obligations of all parties and helps to ensure compliance with the privacy provisions of the *Acts*. The IPC considers that any sharing of personal information should be supported by a written data sharing agreement.*

Also, provincial government organizations are required by Management Board Directive 8-2 to forward a computer assessment to the IPC at least 45 days prior to beginning any computer matching activity. [See *Assessing the Risk*, p. 2]

*For a copy of the *Model Data Sharing Agreement* or the *IPC Survey on Data Sharing in the Ontario Government*, contact the IPC at (416) 326-3333 or 1-800-387-0073. (Also see article in *IPC Perspectives;* Vol.4, Issue 3, Fall 1995)

Aussi disponible en français ...

For a French version of this newsletter or other IPC publications, contact Enza at (416) 326-3953 or 1-800-387-0073.

Address changes?

Got an address change? We want to hear it! Please help us keep our mailing list up-to-date by calling with you revisions; Telephone (416) 326-3953 or 1-800-387-0073. Just ask for Enza.

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INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

VOLUME 5
ISSUE 3
FALL 1996

TOM WRIGHT, COMMISSIONER

Challenges of Change

...predictions about reinventing government through technology are beginning to come true.

"THE CHALLENGES ... OF CHANGE POINT TO a whole new role for freedom of information and privacy co-ordinators," advised Commissioner Wright at the annual access and privacy workshop held at the Macdonald Block in Toronto on September 26 and 27.

The workshop was Tom Wright's sixth in his role as Ontario's Information and Privacy Commissioner. Over 300 participants joined him to share ideas and get advice on meeting the challenges ahead.

Commissioner Wright took the opportunity to praise co-ordinators on the fine work accomplished over the eight years since Ontario's access and privacy legislation came into effect. He also touched on some of the key challenges to come:

"At the top of the list I would place rising public expectations for open government and privacy protection. These expectations are both driving the growing utilization of the *Acts* and creating demands that transcend the bounds of the current access and privacy system...

The information highway is a powerful force for change and predictions about reinventing government through technology are beginning to come true. Increasingly, government organizations are deploying technology to achieve their strategic goals – to provide better customer service – to operate more efficiently – and to form new links between the governors and the governed. I say, full speed ahead on the information highway. But I also say, let's watch where we're going. There are bumps on the road, from both access and privacy vantage points.

The information highway, for example, can facilitate routine disclosure and active dissemination. It can provide the tools – web sites, faxback services, automated voice messages and so forth – for a more proactive approach to the release of information to the public. Exploiting these innovative channels of communication can lead to a fuller and more participatory democracy.

The pitfall is the danger of financial toll booths on the information highway. It is imperative to avoid establishing financial barriers to access that could ultimately create a new social division between information haves and have-nots...

On the privacy side, we used to think of informational privacy and information technology as an either/or proposition. But practical experience has taught us that privacy and technology can be allies rather than enemies.

For example, Health Net – the Ministry of Health computer system linking Ontario pharmacies – warns the pharmacist of dangerous drug combinations and possible over-prescribing, without revealing a profile of the patient's medication history. And Highway 407 – slated to open later

CONTINUED ON PAGE 4

New Web Site For IPC

After all, government-held information really belongs to the citizenry; government is merely the custodian.

– Tom Wright

NEWS GETS AROUND FAST. THE INFORMATION and Privacy Commissioner/Ontario has opened its own web site and it's already received over 1600 "hits". An impressive start for a program that is about to celebrate its first birthday. "We started simply last November, and have been upgrading ever since," says IPC Policy, Research and Information Systems Manager David Duncan.

The web site augments the IPC's traditional forms of communication. Useful to both the casual browser as well as the seasoned researcher, the site has just about everything you might want to know about access and privacy. You'll find information on:

- your rights under Ontario's access and privacy legislation;
- orders and selected compliance investigations from the IPC;
- research and policy matters in the areas of access and privacy;
- the Information and Privacy Commissioner's 1995 Annual Report; and
- full text of Ontario's access and privacy legislation and plain language guides of the *Acts*.

Development of the web site began in June 1995, when the IPC assembled a working group to chart its direction. The group, made-up of network experts, policy, research as well as communications specialists, established priorities for the site. It had to be informative, flexible, easy to use, and cost effective.

During the site's design process, one of the most challenging aspects was how to ensure its "accessibility" to the customer. Accessibility, meaning both ease of use and "readability" for various technological levels of browser. For example, some sites have all sorts of complex graphics and features but not all computers can properly view these kinds of materials. Systems that aren't as technically advanced may be able to view text but not graphics or tables. The IPC has attempted to resolve this by keeping its site relatively basic. "Basic but not boring," assures Duncan. "The group had some difficulty working this one out, but the results are gratifying. We've come up with a user-friendly site that most people can appreciate and find interesting."

Finally, the team had to deal with the large number of documents the IPC could make available. It was found that some were quite short and could be easily converted to HTML. Others were lengthy and contained complex document elements such as tables. It was decided to make certain documents – the orders, investigation reports and policy papers – down-loadable through File Transfer Protocol (FTP) to save on conversion costs. The documents are stored in WordPerfect 6.1 format. As time permits, these documents will be converted to HTML and indexed to permit on-line searches.

The feedback has been encouraging. Users like what they see and often make suggestions. Such responses are important, as evaluation is ongoing. The original working group still meets to discuss how the site is working – to make sure its original priorities remain valid and the materials on it continue to be appropriate. "It's absolutely essential that the site remain user-friendly and the information useful," says Duncan. With this in mind, the group has just expanded the 'What's New' section of its home page. It now includes the agency's most recent efforts including: news releases, policy papers, speeches and other new developments in access and privacy.

CONTINUED ON PAGE 4

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *How much does it cost to make an information request under the Freedom of Information and Protection of Privacy Act?*

A: Requests:
You must pay a $5 application fee to the government organization when you make your request for access to information. Cheques or money orders to provincial organizations (ministries, provincial agencies, boards and commissions) are payable to the Minister of Finance. Cheques or money orders to local government organizations (municipalities, school boards, police commissions, etc) are payable to the government organization e.g., City of Toronto, London Board of Education, etc.

No fees are charged for the time required to locate and prepare records containing your personal information. However, you may be charged for photocopying costs. For all other records, you may be charged for photocopying, shipping, the time required to locate and prepare the records you've requested or any other costs associated with replying to your request.

Appeals:
You must pay an application fee to the Information and Privacy Commissioner when making your appeal.

Appeal fees:
$10 for requests related to access to or correction of your personal information.
$25 for requests related to access to general records. The fee must accompany your appeal and may be paid by cheque or money order payable to "THE MINISTER OF FINANCE".

Work on your request or appeal will not begin until the fee is received.

Q: *Can the application fee for an information request or an appeal be waived?*

A: No, these fees are required by law. There are no provisions for waiving the application fees for an information request or an appeal under the *Acts.*

For information on your rights under the *Acts,* see the IPC web site at http://www.ipc.on.ca or contact the IPC for the following brochures:

Access to Information under Ontario's Information and Privacy Acts;

The Appeal Process and Ontario's Information and Privacy Acts;

Your Privacy and Ontario's Information and Privacy Acts.

Challenges of Changes

CONTINUED FROM PAGE 1

this year north of Metro – will collect tolls electronically while offering an anonymous payment option. To safeguard privacy, the key is to ensure that data protection principles are incorporated in the design of information systems from the ground floor up."

In closing, Commissioner Wright advised co-ordinators:

"Be an advocate for active disclosure through a new web site. See that privacy is placed on the agenda when new information systems are in the design stage. Advise your organization on the balance between universal access to information and the need to recover costs and generate revenue. And as alternative service delivery models are implemented, identify the access and privacy issues involved and provide leadership to deal with them."

...practical experience has taught us that privacy and technology can be allies rather than enemies.

Web Site

CONTINUED FROM PAGE 2

The IPC considers the Internet, and its own web site, an opportunity to enhance the public's access to information. Enhance is the key word. The web site doesn't replace existing ways to get information on or about access and privacy legislation in Ontario. Instead, it offers a choice. Brochures, newsletters, policy papers, speeches and annual reports still exist in printed form.

However, by creating its own web site on the Internet, the IPC can provide more information to more people more quickly.

So, has the IPC's venture into the realm of the Information Highway been a success? Information and Privacy Commissioner Tom Wright thinks so. "After all, government-held information really belongs to the citizenry; government is merely the custodian."

The IPC web site can be reached at:
http://www.ipc.on.ca

It's absolutely essential that the site remain user-friendly and the information useful.

Summaries

"Summaries" is a regular column highlighting significant orders and compliance investigations.

Orders P-1258 and M-830

The municipal and provincial *Acts* were both amended by what is known as "Bill 7" (the *Labour Relations and Employment Statute Law Amendment Act,* 1995), which came into force on November 10, 1995. The new provisions deal with records which are collected, prepared, maintained or used in the context of certain labour relations or employment matters. If records fall under these sections, and none of the exceptions are present, then they are excluded from the scope of the *Acts* and are therefore not subject to the Commissioner's jurisdiction.

In Orders P-1258 and M-830, the issue was whether job competition records are excluded because they relate to "meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest".

It is clear that records normally contained in a job competition file, such as selection criteria, interview questions, marking sheets, resumes, etc., are either "collected, prepared, maintained or used" by the employer. It is also evident that employment interviews, deliberations about the competition, application forms, and reference letters are "meetings, discussions or communications", and that they are about "employment-related matters".

The only real issue in these appeals was whether a job competition is a matter in which an institution "has an interest". The IPC found that:

...an "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry's legal rights or obligations.

In the context of a job competition, an employer is bound by the provisions of the *Ontario Human Rights Code.* If an employer engages in discrimination in selecting an employee in a job competition, the employer has breached the *Code* and could be liable for damages. For this reason, the IPC held that a job competition process involves legal obligations which an employer must meet, and the competition is properly characterized as a matter "in which the institution has an interest".

Both of these orders found that job competition records fell within the new "Bill 7" provisions (sections 65(6)3/52(3)3), and were therefore excluded from the scope of the *Acts.*

Investigation I96-001M

A person complained that a Town had improperly released her personal information to the public and the press. During an open meeting, a Town official read a letter containing the complainant's personal information to one of the Town's Committees. In addition, copies of the letter were distributed to the press.

The Town stated that disclosure was in compliance with section 32(d) of the municipal *Act* since it was to an officer or an employee of the Town who needed the personal information in the performance of his duties. The IPC accepted that the committee's members needed to know about the complainant's concerns. However, as disclosure took place at an open meeting attended by the public and press, it was not in compliance with the *Act.*

The IPC recommended that the Town 1) take steps to ensure that personal information is disclosed only in compliance with section 32 of the *Act,* and 2) amend the minutes of the Committee meeting in question by removing the complainant's name.

Charting the Future of *Perspectives*

PERCEPTIVE READERS OF THIS ISSUE WILL note that several of the articles focus on the theme of a new way of doing business using the new technologies. To quote the Commissioner in his remarks to the recent Access and Privacy Workshop: "...government organizations are deploying technology to achieve their strategic goals – to provide better customer service – to operate more efficiently."

The IPC is certainly one of the organizations wanting to explore the capabilities of the new technology, and nowhere is this more evident than in our efforts to chart the future of this newsletter. As we have done in the past, future issues will look at the implications of the information highway for access and privacy in Ontario.

The information highway also offers some opportunities to revisit the way in which *Perspectives* provides those stories to its readers. Last year the IPC launched its own web site and we have found it enhances our ability to provide information to the public – in fact, one of the regular features on the site is the most recent edition of *Perspectives*.

Now we want to hear from our readers. We want to know about your preferences for future issues: what do you want to read about in *Perspectives* and how do you want to receive that information? Enclosed in this package is a readership survey. Please take five minutes and let us know your thoughts. We'll share the results of the survey in a future issue.

Coming-up next issue:

- Charting the future of *IPC Perspectives* – survey results

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D COMMISSIONER

A Message From the Commissioner

"ON A TYPICAL DAY, I TRY TO HELP ORGANIZATIONS understand what people are looking for with respect to access to information and protection of privacy," says Ann Cavoukian, Ontario's Information and Privacy Commissioner.

Today's competitive environment and government cutbacks see organizations putting a much stronger emphasis on customer service than ever before. Adding a further dimension, recent polls conducted by companies such as Equifax indicate consumers are growing increasingly concerned about the use of their personal information, hence the demand for Cavoukian's input and advice.

"We are experiencing an upsurge of privacy awareness in both public and private sector organizations," stated Ann Cavoukian. "Organizations are responding to consumers' demand that privacy protection become a priority on their agendas."

Papers recently released by Cavoukian are designed specifically to help organizations address the privacy concerns being raised by consumers and organizations.

For example, *Identity Theft: Who's Using Your Name?* Identifies a number of privacy enhancing technologies, including data encryption and anonymous payment mechanisms, which organizations can offer to their customers, in an effort to help curb the proliferation of ID theft.

Moving Information: Privacy & Security Guidelines: To help organizations who are in the midst of moving their offices to new locations, this paper is designed to help organizations pack, move, and unpack files

CONTINUED ON PAGE 2

Ann Cavoukian delivers the opening remarks on September 12 at the annual access and privacy workshop held at Queen's Park

The Changing Face of *Perspectives*

In the Fall 1996 edition of *Perspectives*, we asked you, the reader, to respond to a survey designed to tell us about your preferences for future issues. We would like to again thank each of you who took the time to respond and for providing us with many informative comments and helpful information.

This edition reflects those changes and we hope that you will enjoy many of the new features of each issue. We have brought back the photographs that you told us you enjoyed seeing, and we have created new features such as "The IPC Web site: What's New?"

Providing information to you in a way that meets your needs is important to us at the IPC. We will continue to mail *Perspectives* to you, but we also provide it to you on our Web site. We are committed to exploring the capabilities offered by new technologies and we feel that providing it to you on the Internet appeals to those who indicated that they prefer an electronic version. But by also continuing to mail copies to those who prefer receiving it in hard copy form, we feel that this meets the needs of those who do not have access to Internet services at this time.

We will continue to look for the best ways of providing information to you and encourage you to continue to provide us with ideas and topics that you find timely and informative. We hope that you enjoy future issues of *Perspectives.*

A Message From the Commissioner

CONTINUED FROM PAGE 1

in a fashion that will not result in unauthorized access to company records.

Model Access and Privacy Agreement: Contains a model agreement that can be inserted into a contract between a government organization and a private sector service provider. The agreement helps to ensure that the new service provider continues to provide consumers with protection of their personal information, thereby protecting their privacy, while also continuing to provide access to general records.

Finally, *Smart, Optical and Other Advanced Cards: How to Do a Privacy Assessment* is a joint paper between the Advanced Card Technology Association of Canada and the Information and Privacy Commissioner/Ontario. It is designed to help developers and marketers of applications using smart card technologies to understand and implement, in a practical way, the principles of privacy protection.

Two papers currently being worked on are:

A paper on data mining, which will offer consumers and organizations suggestions on how this technology can best be handled so as to minimize privacy intrusion.

Finally, a joint paper with the Ontario Transportation Capital Corporation will highlight the success that has been achieved in having Highway 407 utilize an anonymous account mechanism which protects the privacy of its motorists.

Ann Cavoukian hopes these papers assist organizations and consumers alike. She welcomes your comments.

Also, the following new *Practices* were issued: *You and Your Personal Information at the Ministry of Transportation, Q&As for Managing Electronic Mail Systems, Geographic Information Systems and Privacy, Geographic Information Systems and Access, Appeals Involving Third Party Commercial, Financial and Related Information, Reconsideration of Decisions, Safe and Secure Disposal Procedure for Municipal Institutions.*

Tools we use daily: are they private?

WITH THE INCREASED USE OF TECHNOLOGY IN our workplace today, individuals are using electronic mail, facsimile and voice mail more frequently in order to communicate.

When an organization first implements electronic mail, facsimile or voice mail, the usual practice is to implement security policies and train staff. However as staff leave, internal processes change or new technologies are procured, it is essential that these policies are revisited to ensure that they continue to be applicable, understood, and followed by staff. To assist organizations with this annual review, we have identified some significant practices you should check for.

Electronic Mail

E-mail has many advantages and can eliminate "telephone tag," but it must be used carefully. As one security expert noted, e-mail has "the security level of a postcard." Policies should encourage users to:

- double-check to ensure the correct address has been entered;
- ensure that the information being transferred is not of a confidential nature unless a security system is in place;
- ensure e-mail addresses are current at all times. As staff leave or change job functions, their access to e-mail should either be removed or updated to ensure there is not unauthorized access.

Facsimile Transmission

Fax use is a convenient and efficient method of transmitting information. Policies should ensure that:

- only authorized personnel send faxes;
- the number of the receiver is double-checked and the confirmation slip confirms the number;
- only the intended recipient takes custody of the fax.

Voice mail

Voice mail assists organizations to facilitate communication and improve customer service. Policies should ensure that:

- voice mail users do not use their phone numbers or extensions as passwords;
- passwords are kept secret and are not written down;
- as staff leave the organization or change locations, their voice mail connections are updated in a timely manner to prevent unauthorized access.

Q & A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: *How do I know the personal information I give to my bank is being safeguarded?*

A: Although banks are not covered by the *Acts*, the Canadian Bankers Association's *Privacy Model Code* provides guidelines to member banks to consider when drafting their own privacy guidelines. Contact your bank for more information about their policies and, in the case of a complaint, speak with your bank's ombudsman to explain your concerns. If you are not satisfied, contact the Canadian Banking Ombudsman to make an appeal for an independent review of the bank's policies. They can be reached by calling (416) 287-2877 or 1-888-451-4519.

A Shifting Landscape: Facing the Challenge of Constant Change

"IT'S EASY TO SEE THAT WE ARE ALL BEING FACED with many challenges as we continue to work in a rapidly changing landscape. Our roles must be carried out in an environment of continuous change and growth," said Ann Cavoukian, Information and Privacy Commissioner, at the annual access and privacy workshop hosted by Management Board Secretariat on September 11 and 12.

The workshop, titled "Access and Privacy: The New Way of Doing Business" attracted over 300 participants who joined together to share ideas, trends, and to examine the challenges to be faced in access and privacy in the future.

Ann Cavoukian took the opportunity to praise co-ordinators on the work carried out in all areas over the past year and touched on some of the challenges that lie ahead. For example, she noted:

"With the external world constantly changing, so must come internal changes — changes in how we view things... what will be needed in many areas will be a paradigm shift, not just a slight adjustment. And the increasing use of technology is, in fact, one of the greatest changes we face today."

This year's conference featured a number of speakers and facilitators on a wide range of topics that appealed to all who attended. With staff at all levels of government working in this new environment, the importance of meeting the resulting challenges was the focus of many of the workshops. Topics covered included how to build access and privacy into the electronic process, alternative service delivery challenges, discussions on data matching and data warehousing, and various special sessions designed to deal with particular concerns. Round table ses-

CONTINUED ON PAGE 5

Janet Faas, Ross Hodgins, Beverly Wise and Stuart Roxborough (left to right) discuss the challenges of alternative service delivery at the annual access and privacy workshop held at Queen's Park on September 11 and 12.

Privacy and Media Publicity

THE PRIVACY OF INDIVIDUALS IN RELATION TO media publicity has been a recurring, well-documented issue for the last hundred years. In a highly acclaimed, seminal article written for the Harvard Law Review in 1890, Samuel D. Warren and Louis D. Brandeis stated: "The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers." Concerns about the invasive, relentless reporting style once described as 'yellow journalism' appear to have surfaced again in the circumstances surrounding the recent death of Princess Diana. The public's reaction to this type of reporting and its lack of concern for individuals' privacy has created a movement around the world for governments to re-examine privacy laws and codes of practices to deal directly with the issue of privacy and the media.

Although few countries include an explicit right to privacy in their constitutions, the Canadian Charter of Rights does provide for certain privacy protections. However, more recently, the federal Standing Committee on Human Rights and Disabilities proposed the adoption of a Canadian Charter of Privacy Rights. Principles recognized by the committee include, among others, 'physical privacy,' 'freedom from surveillance,' and 'privacy of personal space,' and could well encompass, by inference, the issue of the media and privacy. The committee has recommended that the Charter be in place by January 1, 2000. Another step in this direction may come in the form of private sector privacy legislation which the federal government has promised to introduce by the year 2000.

Here in Ontario, we have written to the federal Justice Minister and to the provincial inter-governmental officials involved to advocate the adoption of this Privacy Charter. We hope that such a Charter will assist in restoring the balance between an individual's right to privacy and the free flow of information.

A Shifting Landscape: Facing the Challenge of Constant Change

CONTINUED FROM PAGE 4

sions gave attendees an opportunity for staff working in similar institutions to meet informally and discuss issues of mutual concern.

Conference attendees praised the conference and indicated that the annual event offers an excellent opportunity to meet colleagues, exchange ideas and share trends and issues. Whether new to the information and privacy field or experienced, attendees found something of interest to address their own particular challenges and felt that the topics were both timely and appropriate.

Commissioner Ann Cavoukian advised participants, "As information and privacy co-ordinators, you have the expertise that is invaluable to your organization to assist those around you to understand the changes that can result from new technologies." She encouraged co-ordinators to become involved to ensure that access and privacy are built in right at the beginning rather than as costly add-ons after the fact.

A copy of Dr. Cavoukian's speech can be found on the IPC Web site at http://www.ipc.on.ca.

The IPC Web site: What's New?

IF YOU HAVEN'T VISITED THE IPC WEB SITE, WE would like to encourage you to do so — we have provided this Web site to augment the IPC's traditional forms of communication. Useful to both the casual browser as well as the seasoned researcher, the site has just about everything you might want to know about access and privacy. The IPC considers the Internet, and its own Web site, an opportunity to enhance the public's access to information.

We are pleased to provide you with an easy-to-use map of our site that clearly identifies where all items on the site are located. The Web site can be accessed at http://www.ipc.on.ca.

We always ensure that we provide the most recent orders and investigations which are available online and, in addition, it features recent speeches given by the Commissioner as they become available and all of our new policy publications. Also provided are both full text and plain language guides to the *Municipal Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Act.* Also included are linkages to other access and privacy sites on the Internet.

Finally, if you would prefer to receive your copy of the IPC Annual Report or *Perspectives* online, we have the most recent edition on our Web site.

Should you have any comments regarding our Web site, please call the Communications Branch at (416)326-3333 or 1-800-387-0073 or e-mail us at eragone@ipc.on.ca.

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER

Tribunal Services integrated

THE IPC RECENTLY COMPLETED A COMPREHENSIVE review of our access to information appeals and privacy complaint programs. Our goal was to retain those parts that were working well, while looking for creative ways of improving others.

On May 1, we began implementing the first phase of our organizational and process redesign. We recognize that any effective program must be dynamic and flexible, and ours will continue to evolve and change as needed.

Some of the most noteworthy changes are:

- merger of the appeals and privacy complaint departments into one integrated Tribunal Services Department;
- dedicated provincial and municipal teams of Mediators who will handle both appeals and complaints;
- creation of an expanded Registrar function and a new Intake Team that will resolve straightforward cases informally, and "screen" and "stream" others into the most appropriate process;
- clearly defined job responsibilities and new job titles that reflect new job functions: Case Review Analyst, Mediator, Adjudicator;
- simple, understandable and accessible written materials;
- increased flexibility within the adjudication process.

Our new system will enable straightforward cases to be handled in a summary fashion, while at the same time giving more complex cases enough time and resources to encourage settlement. We expect that a greater proportion of cases will be settled through mediation — clearly the preferred method for all tribunals. As envisioned, fewer cases will proceed to formal adjudication, thereby reducing resource pressures for everyone.

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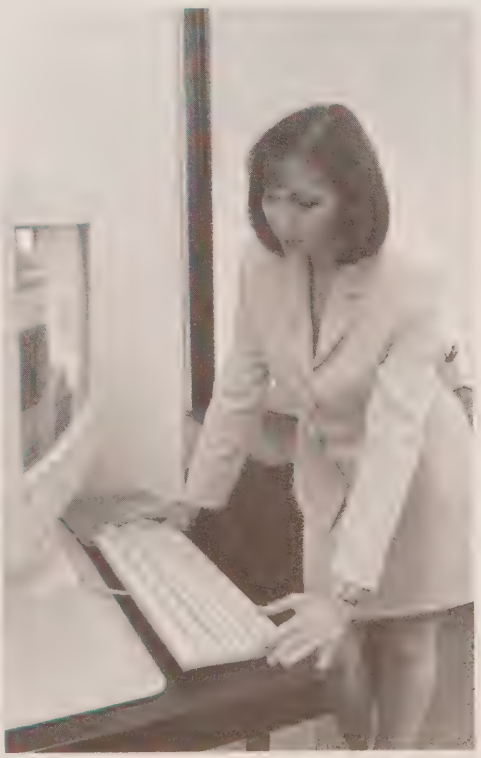

Commissioner Ann Cavoukian checks the redesigned IPC Web site. See page 3.

Authority set out in the *Act*

From time to time, the Information and Privacy Commissioner is asked about her authority to conduct research and offer comment.

The Information and Privacy Commissioner/Ontario has the express authority under Section 59 of Ontario's *Freedom of Information and Protection of Privacy Act* to engage in or commission research and offer comment on the privacy protection implications of proposed legislation and government programs. The Commissioner also has the authority, after hearing from the head of a government institution, to order the institution to cease collection practices and destroy collections of personal information that contravene the *Act*.

Government institutions consult with the IPC in the development of new programs and/or proposed legislation. As a program proceeds towards implementation, the Commissioner provides comment and assists the government institution in taking steps to incorporate appropriate privacy protections. The provision of this kind of assistance does not interfere with the Commissioner's adjudicative role, nor with the exercise of her discretion, as the Commissioner's decisions under the *Act* are based upon the actual operational circumstances of each case.

The Courts have recognized with approval the important function that prospective guidelines can serve in the administrative and regulatory setting. In *Ainsley Financial Corp. v. Ontario Securities Commission* (1995), 21 O.R. (3d) 104, the Ontario Court of Appeal commented on the authority of regulatory tribunals generally, and securities commissions in particular, to provide prospective statements of policy and principle intended to guide the conduct of those subject to regulation (at pp. 108–109):

> The authority of a regulator, like the Commission, to issue non-binding statements or guidelines intended to inform and guide those subject to regulation is well established in Canada. The jurisprudence clearly recognizes that regulators may, as a matter of sound administrative practice, *and without any specific statutory authority for doing so*, issue guide-

CONTINUED ON PAGE 4

Tribunal Services integrated

CONTINUED FROM PAGE 1

Our experience has shown that mediation is the most effective method of dispute resolution. It provides an opportunity for parties to explain their respective positions and work together to arrive at a resolution. Our staff of Mediators will assist the parties by communicating, clarifying issues, pinpointing areas where agreement can be reached, and negotiating those agreements. Mediation is invariably faster than more formal methods of dispute resolution, less costly, and certainly less adversarial. One of our key goals is to ensure that we make optimum use of mediation opportunities.

The creation of our new Tribunal Services Department is a key component of the IPC's commitment to making a positive contribution to access and privacy rights in Ontario. Although we will never compromise our independent oversight responsibilities, we are committed to working constructively with our appellants, privacy complainants, and government clients to ensure that our processes are responsive to the public's needs and expectations.

As Commissioner Ann Cavoukian emphasized in a recent letter, "Our commitment is to provide excellent service to the public, striking the proper balance between quality, timeliness, fairness, flexibility and client responsiveness."

"We have a big challenge in front of us, but we at the IPC are approaching this new era of our operations with enthusiasm and dedication," said the Commissioner just prior to the May 1 implementation of the first phase. "We look forward to working with others in the upcoming months as we take these next important steps in the evolution of access and privacy rights in Ontario."

The IPC has redesigned its Web site to make it easier for visitors to find things. From left, Webmaster David Duncan, Commissioner Ann Cavoukian, and Web site designer Jennifer Kayahara discuss the changes.

Frames and search engine added to IPC's Web site to assist you

THE INFORMATION AND PRIVACY COMMISSION has added new tools to its Web site to make it easier for users to find the information they are looking for.

The key changes include the addition of a link bar and a search engine, the option of using a "frames" version of the site (see below), a new home page that includes a personal welcoming message from Commissioner Cavoukian, and a new section dealing with "reconsiderations." Reconsiderations refer to past IPC decisions that have been revisited for a particular reason.

One of the first changes users will notice upon loading the new IPC home page is the option to choose one of three versions: frames, no frames or French. By selecting the frames version (which most Internet browsers today can support), the user will have a constant menu available that can be used to navigate the IPC site more efficiently. The link bar or button bar appears on the left side of all pages. You can quickly move to another section of the site simply by clicking on the appropriate button.

The search engine will make it much easier to find specific files, such as a particular IPC order. You just enter the order number and the search engine will find it for you. Or, if you want to see what papers the IPC has produced on a particular topic, just enter the key words or phrases and the search engine will quickly list all files that match those words or phrases.

We hope all of you who use the IPC Web site discover that finding specific information is much easier now. We welcome your feedback.

The IPC Web site address is: http://www.ipc.on.ca.

Your e-mail may not be private

ELECTRONIC MAIL, OR E-MAIL, MAY BE A PAPERLESS form of communication — but it can leave records all along its path. Even more than with most other mediums, privacy is not something you can take for granted with e-mail messages. People who are fully aware of the lack of privacy most e-mail systems offer can treat their messages accordingly. Here are a number of points to consider:

A message does not disappear when it is sent.
Some individuals treat e-mail as a screen-to-screen transmission of information. In fact, after a message is delivered, it may be printed or saved, copies may be given to third parties and the sender will have little — if any — control over how the information is subsequently retained, accessed, used or disclosed by the recipient. And, even in the sender's own system, deleting the message from one's personal files does not necessarily delete all copies of it.

Electronic files can be readily transferred.
Once an e-mail message is received, it can easily be forwarded electronically to any number of individuals without the consent or knowledge of the originator.

Copies of messages are not necessarily duplicates of the original.
Once a message is received, the recipient may alter the message before forwarding it to others. With some e-mail systems, recipients of forwarded messages may have no indication as to whether or not the original message was changed in any way.

Features of e-mail technology.
You need to be aware of how your system works. For example, when you hit the *Reply* key, does the system automatically just send your response to the originator of the message or does it send your response to everyone who was copied on the original message?

Not all e-mail systems automatically encrypt files and messages.
While some e-mail systems encrypt messages and files automatically, many do not. It is important to note that even though you are linked to an e-mail system that provides encryption, some others are not — and when a message leaves one system, it will be decrypted.

Use of e-mail off-site may result in the creation of records that the organization has little control over.
Individuals using e-mail at home may make printed copies of e-mail messages and store them in unprotected personal archives. It is also possible for individuals working at one location to send information to be printed at another location. This gives the organization little, if any, control over the material.

Authority set out in the *Act*

CONTINUED FROM PAGE 2

lines and other non-binding instruments. (emphasis added)

The Court of Appeal went on to recognize that, so long as they do not "contradict" the statute, "pre-empt the exercise of the regulator's discretion," or "impose mandatory requirements enforceable by sanction," such guidelines or statements can be effective "tool[s] available to the regulator so that it can exercise its statutory authority and fulfil its regulatory mandate in a fairer, more open and efficient manner." (See also *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at p. 596.)

"Unlike the Ontario Securities Commission in the *Ainsley Financial* case, the Information and Privacy Commissioner's authority to offer comment on proposed government programs or legislation is expressly set out in the *Act*," said Commissioner Ann Cavoukian. "This distinction makes it even more clear that the IPC's role in offering comment and assistance in relation to this program is entirely appropriate and consistent with principles of administrative efficiency and fairness under the *Act*."

Summaries

Summaries is a regular column highlighting significant orders and compliance investigations.

Order M-1083

The Halton Board of Education received a request for access to information respecting the ages of all full-time probationary teachers who were first-time hires by the Board since 1991. The Board provided the appellant with a fee estimate of $225 to search for and prepare the information.

The appellant provided a copy of a response he received from a different Board of Education — releasing precisely the same information he had requested from the Halton Board — where the only fee charged was the standard $5 application fee. The appellant also indicated that the same information was requested from a third Board of Education and was disclosed for a fee of $22.50.

The IPC found that the search charges described in the *Act* are available with respect to manual search activities required to locate a record. The IPC concluded that the Board's use of the phrase "run reports from Personnel system" and the suggestion that Information Technology staff may assist in processing the request meant that the Board maintains the responsive information in some kind of electronic format. As this type of electronic search is not manual, it does not fall within section 6.3 of the Regulation. Accordingly, the Board was not entitled to charge the appellant a search fee for the time spent on this activity under section 45(1)(a).

However, the IPC found that time spent by a person running reports from the personnel system would fall within the meaning of "preparing the record for disclosure" under section 45(1)(b) and, therefore, the rate of $7.50 per 15 minutes established under section 6.4 of the Regulation may be charged. It was noted, however, that the Board was only entitled to charge for the amount of time spent by any person on activities required to generate the reports. No charge could be assessed for computer time, printing the information or for the use of any other material or equipment involved in the process of generating the record.

Order P-1532

In this order, the IPC found that a journal maintained by a senior employee of an institution was not under the custody and control of the institution. The journal contained both personal and work-related entries.

The requester sought access to records relating to a specific waste disposal site, including notes, journal entries and records of conversations documented by three named Ministry employees. The Ministry granted access to the notes of two of the named employees and stated that no records existed for the third employee. The Ministry made representations on the issue of the reasonableness of its search for records responsive to the request. As part of its submissions, the Ministry included a memorandum of explanation from the third employee. The employee stated that he maintained a daily journal at home in which he recorded daytime work-related as well as personal activities. The Ministry and the employee were asked to make representations on the issue of the Ministry's custody and control of the journal.

In making the determination, the IPC inquiry officer considered the factors listed in *Order 120.* In that order, then-Commissioner Sydney B. Linden commented that "it is necessary to consider all aspects of the creation, maintenance and use of the particular record."

The inquiry officer examined the primary objective underlying the "creation, maintenance and use" of the record and concluded that it was for the purpose of recording the employee's personal history and thus was not under the custody or control of the institution.

Anonymity on the 407

AN ELECTRONIC TRANSPONDER SYSTEM THAT enables drivers to use the 407 Express Toll Route anonymously has been developed through four years of collaboration between the IPC and the Ontario Transportation Capital Corporation (OTCC). Implemented in January 1998, this system allows drivers to use the electronic toll highway — which relies on electronic surveillance for billing — without having to surrender any of their privacy.

A transponder is a small electronic device, about the size of a garage door opener, which attaches to the interior of the front windshield, behind the rear-view mirror. When the vehicle passes under an overhead electronic sensor on a 407 on-ramp, the sensor reads the electronic signal the transponder emits and logs the car onto the system. When leaving the highway, the transponder is read by another overhead electronic sensor. The distance travelled and time of day (it is more expensive to use the express toll route during rush hour) determine the highway toll.

Prepayment and cash deposits are the tools that make this system work anonymously since personal information only needs to be collected for billing purposes. Individuals can set up an anonymous account where no personal information needs to be provided to the OTCC — not even one's name. A security deposit is given for the transponder (required for all accounts) and a prepayment is made, from which usage charges may be deducted. All toll charges incurred and prepayments made are referenced through this account number, resulting in total anonymity for the driver.

Also, in March of this year, the Compliance Department of the IPC visited the OTCC Operations Centre and reviewed the rear-plate recognition system (used for billing vehicles that do not carry transponders). Based on our review and our discussions with staff, the IPC does not have any privacy or security concerns with the way that the OTCC collects, uses, or stores the personal information it collects from the MTO Vehicle Database to support the billing system as it relates to the rear-plate recognition system.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q. I would like to have an unlisted telephone number, but have been told that it could cost up to $5 more per month. Is this true?

A. In the past, monthly rates for unlisted telephone numbers in Canada ranged from $1.55 to $5.75. This fee sometimes included free per line blocking. In a recent decision, the CRTC found that because of increasing privacy concerns, it would be appropriate for telephone companies to provide the unlisted number service at a rate that does not exceed $2 per month for residential subscribers. For more information on this issue, please refer to Telecom Decision CRTC 98-109 — Rates for Unlisted Number Service and Related Issues.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

E-commerce hobbled until privacy issues are resolved

THE FULL POTENTIAL OF ELECTRONIC COMMERCE will never be reached until the privacy issues are resolved, Information and Privacy Commissioner Ann Cavoukian told the annual access and privacy conference hosted by Management Board Secretariat.

The sold-out conference, *Access & Privacy: Best Practices for the Best Solutions*, was held Oct. 1 and 2 in the Macdonald Block at Queen's Park. Organized by the Corporate Freedom of Information & Privacy Office of MBS, it featured a variety of speakers, workshops and round-table discussions. As well as speakers, the IPC provided discussion leaders for a number of the workshops and round-table sessions.

The opening keynote speaker, Commissioner Cavoukian praised the efforts of freedom of information and protection of privacy co-ordinators, then offered an overview of an issue that is attracting a great deal of attention around the world — how to protect the privacy of online consumers.

CONTINUED ON PAGE 3

Commissioner Ann Cavoukian was a keynote speaker at the 1998 access and privacy workshop at Queen's Park in early October.

Early results from Tribunal re-organization very positive

In the Spring issue of *IPC Perspectives*, we reported significant organizational and procedural changes in Tribunal Services, which is responsible for both access appeals and privacy investigations. These changes were implemented last May 1 and have generated some exciting results.

In the first four months, our newly created Intake team responded to 592 contacts from members of the public regarding access to information or privacy complaints. During this period, 102 files were streamed directly to Mediation (which is the IPC's preferred method of resolution) and eight were sent directly to Adjudication. Over those four months, 48% of appeals and 56% of complaints were resolved at Intake. And significantly, 70% of these files were resolved within 21 days of the file being opened.

Another of the keys to the new Tribunal structure is our enhanced focus on mediation, which has resulted in a system that includes:

- *Regular mediation*, which captures the majority of our files.
- *Straightforward appeals*, where the sole issue is either a deemed refusal, time extension, transfer of the request or inadequate decision letter. These appeals are now being mediated and adjudicated by a single Mediator within a shortened time period. Most of these appeals have been resolved through mediation. In the past, these types of appeals would have gone through the same process as more complex files, likely taking more time to resolve.
- *Reasonable search appeals*, where the sole issue is whether records exist or additional records exist. Two Mediators are assigned to these types of files, one as Mediator, the other as an acting Adjudicator who may conduct an oral inquiry and issue an order. The appeal proceeds immediately to inquiry, with the option of mediation before and/or at the inquiry. We have had several of these cases, most of which have been mediated before the oral inquiry.

Another aspect of Tribunal Services is our institutional relations program, which is now under way with two provincial institutions and one municipal institution participating. This program helps IPC staff gain a better understanding of the way institutions operate.

In our commitment to continuously refine our processes, the IPC will be implementing additional changes, including:

- Developing performance measures for our Tribunal programs;
- Improving the inquiry process;
- Improving the privacy complaint process;
- Developing an access and privacy educational program for schools.

Practices updated, re-released

Each year, the Information and Privacy Commissioner receives requests for thousands of copies of IPC publications — in some cases, for papers published years earlier.

One of the IPC's key publications is *Practices*, a series of short newsletters addressing specific access and privacy issues or processes. This series, aimed primarily at provincial and municipal government organizations, was launched in June 1992 and there have been new *Practices* issued each year. This fall, to reflect changes in process and to add additional information to a number of these editions, the IPC has updated and re-released its core series of *Practices*.

The new series of 29 *Practices*, which replaces the old series of *Appeals* and *Compliance Practices*, has been posted to the IPC Web site (www.ipc.on.ca). You can find this series in the Code of Procedures section of the Web site. For anyone without Web access, *Practices* can be ordered free of charge by calling the IPC at 416-326-3333.

The updated series of *Practices* includes:

Number 1	Drafting a Letter Refusing Access to a Record
Number 2	Copying Information to Individuals Inside and Outside an Institution
Number 3	Providing Records to the IPC
Number 4	Mediation: What an Institution Can Expect
Number 5	Third Party Information at the Request Stage
Number 6	Raising Discretionary Exemptions During an Appeal
Number 7	The Collection and Use of the Social Insurance Number
Number 8	Providing Notice of Collection
Number 9	Responding to Requests for Personal Information
Number 10	Video Surveillance: The Privacy Implications
Number 11	Audits and the Collection of Personal Information
Number 12	Increasing the Effectiveness of Representations
Number 13	Affidavit Evidence
Number 14	The Indirect Collection of Personal Information
Number 15	Clarifying Access Requests
Number 16	Maintaining the Confidentiality of Requesters and Privacy Complainants
Number 17	Processing Privacy Complaints
Number 18	How to Protect Personal Information in the Custody of a Third Party
Number 19	Tips on Protecting Privacy
Number 20	Privacy and Confidentiality When Working Outside the Office
Number 21	Privacy of Personnel Files
Number 22	Routine Disclosure/Active Dissemination (RD/AD) of Government Information
Number 23	Preparing the Records Package for an Appeal
Number 24	Q's and A's for Managing Electronic Mail Systems
Number 25	You and Your Personal Information at the Ministry of Transportation
Number 26	Safe and Secure Disposal Procedures for Municipal Institutions
Number 27	Appeals Involving Third Party Commercial, Financial and Related Information
Number 28	Reconsideration of Appeal Decisions
Number 29	Appeals Involving Personal (Third Party) Information

Summaries

Summaries is a regular column highlighting significant orders and compliance investigations.

Order M-1154

The County of Prince Edward received a request for access to information about contributions to candidates for municipal office in the 1997 election. The information was included in forms filed with the County Clerk under the *Municipal Elections Act, 1996* (the *MEA*). Section 88(5) of the *MEA* states that these records are "public."

The County denied access, citing section 88(10) of the *MEA*, which states that no person shall use information obtained from public records described in subsection (5), except for election purposes. The County explained that section 88(10) applied because the appellant was intending to use the information for non-election purposes.

During mediation, the appellant narrowed his request to include only information relating to mayoral candidates, and clarified that he was seeking the names and addresses of all individual contributors, and amounts contributed where they exceeded $100. The County later issued a revised decision in compliance with section 22(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*, citing the section 14 personal privacy exemption. The County also said the appellant's request should be limited to names only, based on the wording of his original request.

The IPC found that, because the request did not sufficiently describe the records sought, under section 17(2), the County should have informed the appellant of the defect and offered assistance in reformulating the request by identifying responsive records. Because the County failed to do so, and because the initial decision letter was not in compliance with section 22(1)(b) and "effectively foreclosed the prospect of clarification," the IPC found it was reasonable to accept the appellant's request clarification.

The IPC found that all of the information sought was "personal information." Further, the IPC found that disclosure of information about the "over $100" contributors was expressly authorized by section 88(5) of the *MEA* and thus the section 14(1)(d) exception applied. Accordingly, the IPC ordered the County to disclose this information.

The IPC found that since the information about the "$100 or under" contributors was not required to be included in the records, section 14(1)(d) did not apply to it. The IPC also found that disclosure of this information was presumed to be an unjustified invasion of personal privacy under sections 14(1)(f) and 14(3)(f). Since no other exception in section 14(1) was found to apply, the IPC upheld the County's decision to withhold this information.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

To reach more Ontarians, IPC adds electronic delivery

THE INFORMATION AND PRIVACY COMMISSIONER/Ontario, in order to reach more Ontarians, has added an electronic delivery option.

This edition of *IPC Perspectives* is the first IPC publication being delivered in two formats, print and electronic. The last edition of *Perspectives* (Fall 1998) included an insert on how you could be added to the IPC's new electronic mailing list.

The IPC has also been contacting various individuals and offices and a number of these have also selected elec-

CONTINUED ON PAGE 2

Commissioner Ann Cavoukian with Brian Beamish, the IPC's new Director of Policy and Compliance, and Larry Hebb (right), Chairperson of the Canadian Centre for Ethics and Corporate Policy, prior to the Commissioner's February speech on privacy and e-commerce during the CCECP's spring luncheon series.

New numbering system

LATE IN 1998, THE IPC's TRIBUNAL SERVICES Department introduced a new numbering system to help clients and IPC staff quickly identify orders, appeals, and complaints.

Here's how the new system works. Depending on the circumstances, the new number is composed of either two or three parts, separated by hyphens. The two-part numbers include a prefix and a number (e.g., MO-11018). The three-part numbers include a prefix-number-suffix (e.g., PO-15456-I).

The prefix indicates both:

- the jurisdiction (Provincial or Municipal);
- the type (Appeal, Complaint or Order).

The number is a unique identifying number for this particular item.

Some orders will have a suffix which indicates the order is one of the following:

- an Interim order;
- a Final order;
- a Reconsideration order.

The two examples cited are a municipal order and an interim provincial order, respectively.

To reach more Ontarians, IPC adds electronic delivery

CONTINUED FROM PAGE 1

tronic delivery. As well as receiving new publications faster, individuals on the electronic delivery list will find it much easier to pass copies along within or outside the office.

The IPC publishes between 10 and 20 papers and reports each year, from the Annual Report to *Perspectives* (a twice-a-year newsletter) to policy papers to a new publication series called *If you wanted to know...* (for more on this new series, see page 3).

Subscribers to the electronic mailing list will receive IPC publications in PDF (portable document format), a format that is widely used. These files can be read and printed using Adobe Acrobat Reader software — free versions of which are available for all major platforms (including Windows and Macintosh). The software can be downloaded directly from Adobe at: http://www.adobe.com/prodindex/acrobat/readstep.html.

If you would like to be moved from our regular mailing list to our electronic list, simply e-mail the following information to **publicat@ipc.on.ca**:

Your name
Organization
Mailing address
E-mail address

If you have any questions or comments about electronic delivery, please contact the IPC's Communications Department at (416) 326-3333, or 1-800-387-0073.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

R-9800015

In this order, the IPC reconsidered its Order P-1538.

The appeal stemmed from a decision of the Ministry of the Attorney General to grant partial access to correspondence received by the Ministry from several organizations requesting that the Ministry take action against the activities of the organization represented by the appellant. The correspondence, and the subsequent internal Ministry responses, contain the names and titles of the individuals who wrote the letters on behalf of each organization, the dates of each letter, and the business address, telephone, and facsimile numbers for each organization.

After an extensive review of past orders, court decisions and related federal legislation, the IPC found that the names of the individuals who wrote the letters relate to them only in their capacities as officials with the organizations which employ them. The IPC concluded that their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing.

The IPC found that this information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not **about** these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. The individuals expressing the position of an organization act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message.

Interim Order MO-1168-I

This interim order dealt with a claim by the Kawartha Pine Ridge District School Board that a request made by an unsuccessful bidder for records regarding consulting services was frivolous and vexatious.

The Board raised this claim after learning the unsuccessful bidder had appealed its decision not to grant access. The Board did not advise the appellant directly that it intended to

CONTINUED ON PAGE 6

Q & A

Q & A is a regular column featuring topical questions directed to the IPC.

Q. What qualifies as personal information?

A. Personal information is defined in the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* as "any recorded information about an identifiable individual."

Our new management team

By Ann Cavoukian, Ph.D., Information and Privacy Commissioner

As part of our ongoing review of IPC operations and structures, we have been examining our senior management structure and have made a number of significant changes. Our new system is now in place and I am very pleased to announce our new management team.

The three members of the new executive are Assistant Commissioner Tom Mitchinson, who is responsible for Tribunal Services; Ken Anderson, Director of Corporate Services and General Counsel; and Brian Beamish, Director of Policy and Compliance.

Also joining the management team is my new executive assistant, Greg Keeling.

Many of you may know Tom and Ken — they are long-time members of the IPC and are invaluable. Brian and Greg both joined the IPC recently. Brian came to the IPC from the Ministry of Solicitor General and Correctional Services, where he was a Senior Policy Advisor. Greg comes to us from Management Board Secretariat, where he was a Senior Analyst.

Summaries

Continued from Page 5

deny access to the records on this basis in accordance with section 20.1(1) of the *Act*, but notified the Commissioner's office of its intention. In addressing this procedural deficiency, the IPC found that the appellant was not prejudiced by the lack of notice from the Board as any deficiency was rectified by the Commissioner's office at an early stage in the appeals process. However, the IPC stated that had the Board raised this issue later in the process, the claim may have been disallowed.

The Board based its arguments under both sections 5.1(a) and (b) on the following: alleged wrongful acts of the appellant; the appellant had already been given the reasons for the Board's decision; the appellant was seeking access to information to use it either to discredit the Board or to make a claim against it.

The IPC found that the appellant had only submitted one, clearly articulated request to the Board. The IPC also found that the Board's reasons relate to activities of the appellant that are completely unrelated to the appellant's attempts to gain access under the *Act*. Therefore, the appellant's actions in filing the access request did not amount to a "pattern of conduct." The IPC found further that, even though the appellant's eventual use of the information may be against the Board's interest, the appellant's reasons for seeking access were genuine. Therefore, the request was neither made in "bad faith" nor for a purpose other than to obtain access.

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ANN CAVOUKIAN, Ph.D COMMISSIONER

Multi-level efforts to promote Freedom of Information

ONTARIO INFORMATION AND PRIVACY COMMISSIONER Ann Cavoukian outlined to delegates at Management Board Secretariat's (MBS)1999 access and privacy conference a number of the steps that her commission has been taking to promote freedom of information, both within government and to the general public.

The Commissioner cited meetings she has been having with top-level officials, changes in the way her annual report addresses how government organizations respond to access requests, an expanded Outreach program and a number of other steps, including a special publication, *Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators relating to Access to Information.*

The Commissioner told the more than 300 delegates at the conference, which is organized by the Corporate Freedom of Information and Privacy Office of MBS, about the new focus of her annual reports.

"When we released last year's annual report, I made it clear to anyone who asked that we were taking a new approach and, in some sense, entering a new era of public accountability for the operation of Ontario's FOI and privacy scheme. Our next annual report will build on this new direction, and we will be including response time statistics for all ministries, and selected agencies and municipal institutions. I'm not doing this in order to embarrass or single-out individual organizations. It is clear that the public wants to know how well its government is complying with the requirements of this important legisla-

Commissioner Ann Cavoukian

In this Issue:

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Recent IPC publications

Since the last issue of Perspectives in spring 1999, the IPC has issued a number of informative publications. They are readily available from the Web site <http://www.ipc.on.ca> or can be ordered from the Communications Department. These include:

- **Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators relating to Access to Information**: Each provincial and municipal government organization has a Co-ordinator. This Backgrounder looks at the critically important role that Co-ordinators play. (September 1999)

- **Consumer Biometric Applications: A Discussion Paper** is a detailed review of various biometrics, technologies that use them, how these technologies work, and general issues associated with them. With a view to application in the private sector, the paper also discusses the relevant privacy concerns. (September 1999)

- **Privacy and Biometrics** examines the privacy implications of using biometric technologies and includes a call to action to the data protection community to ensure that these technologies are used in a way that conforms to the expectations of a privacy-minded society. (September 1999)

- **Privacy as a Fundamental Human Right vs. an Economic Right: An Attempt at Conciliation** reviews the traditional approaches to the topic and examines the tension between legislation and self-regulation in addressing the issue. Also discussed are information intermediaries and the concept of a structured market for personal data. (September 1999)

- **Biometrics and Policing: Comments from a Privacy Perspective**. This is a chapter, contributed by Ontario Information and Privacy Commissioner Ann Cavoukian, to the book, Polizei und Datenschutz - Neupositionierung im Zeichen der Informationsgesellschaft, a compilation of essays by international privacy and data protection experts. The book was released in conjunction with the Data Protection Authority of Schleswig-Holstein's 1999 Summer Academy. This theme of the conference was Police and Data Protection. (August 1999)

- **E-mail Encryption Made Simple** discusses the issues regarding the use of e-mail encryption. (August 1999)

- **If you wanted to know ... Identity Theft and Your Credit Report: What You Should Do to Protect Yourself** provides guidelines on what to do about your credit report if your identity/identification has been stolen. (July 1999)

- **IPC Practice Number 30 — Submitting and sharing of representations in an inquiry** outlines changes made to the process. [See story, page 4.] (Revised April 1999)

- **Best Practices for Protecting Individual Privacy in Conducting Survey Research**:
  - **Full Version** or
  - **Condensed Version** or
  - **Summary of Best Practices**
  (all April 1999)

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1688 (Appeal PA-980244-1)

The Ministry of the Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records concerning an application for a certificate of approval to discharge air emissions into the natural environment at a specified location.

The Ministry granted partial access to the records, citing section 17(1) of the *Act* as the basis for withholding the remaining records. The affected party, who had submitted the application for a certificate of approval, appealed the Ministry's decision to grant access to one record consisting of a compilation of technical data.

The IPC found that the record consisted of technical information, and thus met part 1 of the three part test for exemption under section 17(1). The IPC also found that the record was supplied in confidence, and thus met part 2 of the three part test. However, the IPC did not accept the affected party's submission that disclosure of the record could reasonably be expected to prejudice significantly the affected party's competitive position under section 17(1)(a). The IPC found that the affected party's arguments were not supported by the contents of the record, and concluded that the affected party had failed to bridge the evidentiary gap between the disclosure of the record and potential harm. Therefore, the IPC held that the three part test for exemption under section 17(1) had not been met.

Although it was not necessary to do so, the IPC further found that, even if section 17(1) had applied, the "public interest override" in section 23 would have applied to require disclosure of the record. The IPC stated that the public interest in protecting business interests is clearly outweighed by the compelling public interest in disclosure of the record for the purposes of advancing the fairness and comprehensiveness of the environmental approval process, informing the public about the potential effects should the certificate of approval be granted, and ultimately enhancing environmental protection and public health and safety.

As a result, the IPC upheld the Ministry's decision to disclose the record at issue.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: How do I protect myself against identity theft?

A: There are a number of precautions you should take to protect yourself against identity theft. The IPC has published two papers on this issue. *Identity Theft: Who's Using Your Name?*, was released in 1997. *Identity Theft and Your Credit Report: What You Should Do to Protect Yourself*, part of the IPC's *If you wanted to know...* series, was released in July 1999. Both can be downloaded from the IPC's Web site or ordered from the Communications Department.

Multi-level efforts to promote Freedom of Information

CONTINUED FROM PAGE 1

tion. The public has a right to know this information, and I feel it is my obligation, and indeed my statutory responsibility, to ensure that this matter is fully addressed."

"... improving the effectiveness of FOI is very important to me. I have made it a priority to raise this issue whenever I can within senior levels of government.... My annual report is the principal vehicle for reporting on the status of government compliance with the *Acts*, and I want to make it clear to everyone here that my next annual report will be building on this theme."

The Commissioner's 1998 annual report, released in June 1999, was the first step in this new direction. In her address to the conference, the Commissioner cited the strong demand the IPC faced for copies of that report. For the first time ever, the IPC had to have additional copies printed.

The Commissioner also stressed the IPC's willingness to work collaboratively with government to help ensure that access and privacy provisions of legislation or government programs are adequately and appropriately addressed.

"The overhaul of the *Social Assistance Reform Act* and the creation of the new Legal Aid Ontario Corporation are two good examples. We believe that the public has benefited from this consultative approach, and we are committed to building on these successes. Perhaps the best example of our current work with government is the Integrated Justice Project. Many of you will know that this enormous government initiative will fundamentally restructure the entire justice system. It is very strongly technology-based, and presents significant access and privacy challenges."

"I want to commend the Ministry of the Attorney General for recognizing these challenges and for addressing them upfront and early in the project's development. A working group on access and privacy has now been operational for approximately six months.... I'm confident that the combination of our early involvement and the Ministry's commitment to addressing access and privacy issues will allow for a new and improved justice system that can still respect the rights and obligations of the province's access and privacy scheme."

Commissioner Cavoukian also presented a brief overview of major developments in the field of privacy.

A copy of the Commissioner's speech is available on the IPC's Web site, http://www.ipc.on.ca/web_site.eng/whatsnew/whatsnew.htm.

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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D COMMISSIONER

Commissioner Ann Cavoukian, with Assistant Commissioner Tom Mitchinson (right) and Policy and Compliance Director Brian Beamish, made a presentation on privacy issues at a recent meeting of Citizens for Local Democracy at Toronto's City Hall. (See story on page 2.)

IPC Reaching Out to Ontario

ONTARIO INFORMATION AND PRIVACY COMMISSIONER Ann Cavoukian has launched a new outreach program, *Reaching Out to Ontario*, as part of the IPC's efforts to help educate the public about Ontario's access and privacy laws and to help keep the public abreast of access and privacy issues.

Under this program, a team from the IPC visits three different regions of Ontario each year for a series of public meetings, media interviews and special presentations to business, university or other groups. A key component of these trips are meetings with area Freedom of Information and Privacy co-ordinators.

CONTINUED ON PAGE 3

n this Issue:

Privacy: Overview of key issues

Ontario Information and Privacy Commissioner Ann Cavoukian provided an overview of many of the privacy issues facing Canadians today in a recent presentation, *Erosion of Privacy Rights?*, to the Citizens for Local Democracy group.

In her presentation at this open meeting at Toronto's City Hall, the Commissioner looked at issues that included:

- the potential impact on privacy of the transfer of government services/ programs to the private sector;
- the increased use of technology and the potential for an erosion of privacy rights if privacy protections are not built in;
- the potential impact on individuals of the mishandling of personal information;
- why e-commerce can only reach its full potential if privacy and security issues are resolved;
- the Canadian privacy legislative framework.

The Commissioner outlined what government organizations are covered under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, and what the privacy provisions of the *Acts* mean.

She also cited a number of the reasons why individuals would file a privacy complaint with the IPC, including improper collection, use or disclosure of personal information by a government organization.

The Commissioner explained that the IPC investigates privacy complaints, reports on these investigations and makes recommendations to government institutions.

After discussing the status of Bill C-6, the federal privacy legislation drafted to cover the private sector, the Commissioner stressed that she has encouraged the Government of Ontario to enact complementary legislation.

Also attending the presentation were Tom Mitchinson, Assistant Commissioner, and Brian Beamish, the IPC's Director of Policy and Compliance, who participated with the Commissioner in a question and answer session following the Commissioner's presentation.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: What constitutes a record under freedom of information and protection of privacy legislation?

A: Government organizations hold their information in "records," which are defined by the legislation as: "any record of information however recorded, whether in printed form, on film, by electronic means or otherwise...." The legislation goes on to specify that this includes correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof.

What would be of help to you?

WHAT WOULD YOU LIKE TO SEE ON THE IPC's Web site?

The design and content of the site are continually reviewed and a number of design changes are being implemented this year. Several new pages have been added in recent months and various other changes are being considered.

The IPC's Web site provides information for a wide audience — from Freedom of Information and Privacy Co-ordinators and other government employees to teachers, students, access and privacy advocates, the news media, researchers, business, legal and human resources professionals, and people from many other walks of life.

A short questionnaire will be soon to be added to our Web site, asking visitors what resources they find most helpful and what else they would like to see on the site (http:// www.ipc.on.ca).

We would appreciate receiving your input and suggestions.

Recent IPC publications

AMONG RECENT IPC PUBLICATIONS ARE:

- *What Students Need to Know About Freedom of Information and Protection of Privacy*, a guide for Grade 5 teachers that was prepared by the IPC with the assistance of classroom teachers and curriculum specialists. The guide includes teachers' notes, an introduction that provides students with an overview of the subject matter, classroom activities and resources for lesson planning. This material complements the Grade 5 Social Studies unit on Government in Canada.

- *How to protect your child's privacy online*, part of the IPC's *If you wanted to know...* series, encourages parents to teach their children to be "Net smart" and provides a number of practical tips for parents on how to help accomplish this.

All IPC publications are available on the IPC's Web site, http:// www.ipc.on.ca.

Upcoming presentations

AMONG UPCOMING SPEECHES AND PRESENTATIONS by IPC staff are:

- a presentation by Commissioner Ann Cavoukian to the Tourism Innovation 2000 Conference, sponsored by the Conference Board of Canada, April 11, at the International Plaza Hotel and Conference Centre.

- a presentation by the Commissioner to the Women's Executive Network, June 7, at the Toronto Lawn Tennis Club.

Summaries

CONTINUED FROM PAGE 6

attorney to the police officer. It was the position of the Police that these records were covered by solicitor-client privilege.

In Order M-52, the IPC had found that section 12 did not apply to pages of a Crown Brief prepared for the Crown attorney by municipal police. Based on the recent Supreme Court of Canada judgment, *R. v. Campbell* [1999]1. S.C.R. 565, the Police submitted that the conclusion in Order M-52 does not reflect the law of solicitor-client privilege in Canada.

R. v. Campbell addressed a claim of solicitor-client privilege by the RCMP for advice received from a Department of Justice lawyer respecting the lawfulness of a particular investigative technique. The Court found that:

The solicitor-client privilege is based on the functional needs of the administration of justice. The legal system, complicated as it is, calls for professional expertise. Access to justice is compromised where legal advice is unavailable. It is of great importance, therefore, that the RCMP be able to obtain professional legal advice in connection with criminal investigations without the chilling effect of potential disclosure of their confidences in subsequent proceedings.

In applying this principle to the circumstances in that case, the Court concluded that the RCMP consultation with the Department of Justice lawyer, "...falls squarely within this functional definition...." The Court disagreed with the proposition which had been adopted by Commissioner Wright in Order M-52 that because a police officer is not an agent of the Attorney General, no solicitor-client relationship could exist between a Crown counsel and a police officer. Accordingly, the IPC found that Order M-52 was no longer a proper statement of the law of Canada, and its precedent was not followed.

In this case, the IPC found that the Police had sought legal advice from a professional legal adviser, the assistant Crown attorney, and, as such, the communications relating to that purpose are subject to the common law solicitor-client privilege, and section 12 applied.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian, Senior Adjudicator and Manager of Adjudication David Goodis (right), and Legal Counsel John Higgins — architects of the IPC's new Code of Procedure — examine the completed document.

Code of Procedure created as a guide

IN LINE WITH THE IPC'S OBJECTIVE OF transparency in the appeals process, Commissioner Ann Cavoukian has released a *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act*. The *Code* outlines the basic procedural steps in the various types of appeals under the *Acts*.

"The *Code* will benefit appellants, affected parties and institutions alike," says Assistant Commissioner Tom Mitchinson. "They will be in a better position to know how their appeal is processed. If anything is unclear, the *Code* will be a guide and should answer most questions." Mitchinson describes the *Code* as being a single, comprehensive document that covers the procedures in appeals from start to finish — a "one-stop" source. He emphasized that a special effort was made to use plain language throughout the document.

The *Code*, which applies to appeals made under both the provincial and municipal statutes, is in effect for all appeals that were received by the IPC's Tribunal Services Department on or after September 1, 2000. It is comprised of two parts: the main *Code*, which sets out basic procedural

CONTINUED ON PAGE 5

Public commitment to FOI needed MBS conference delegates told

Although the values underlying freedom of information laws — open, transparent, accountable and citizen-driven government — are embraced proudly and enthusiastically by the governments that introduce them, commitment to these values is hard to sustain over time, Tom Mitchinson, Assistant Commissioner, Ontario Information and Privacy Commission, told Management Board's annual access and privacy conference. "Secrecy is inherently attractive to governments, and demands for accountability through use of the law butt up against the instincts of self-protection on a daily basis. FOI laws need two things in place for any hope of success: **rules** and **commitment**."

"Over the course of the past year or so, we've made progress as a province in both of these areas. Today, I'd like to acknowledge these successes, and then go on to identify some of the challenges for the upcoming year."

He identified our laws as the most important set of "rules," maintaining: "We have strong and robust FOI laws in Ontario.... I'm sure we can all think of changes that would improve our statutory framework, but I would argue that our laws are fundamentally sound."

He reviewed a number of other rules, including the binding directives and guidelines issued by Management Board of Cabinet. "The Secretary of Management Board of Cabinet took a significant step in this area during this past year by agreeing to amend the Management Board Guideline on Freedom of Information." Mitchinson pointed out that the new guideline will more clearly reflect expectations for the effective administration of FOI programs throughout the government. "We had hoped for stronger requirements in certain areas," he said, "and we'll be pushing for improvements, but I don't want to underestimate the importance of the new guideline in more clearly defining expectations."

"So, I think we're making some progress in the area of rules," he told the conference.

"However, no matter how good and comprehensive your set of rules is, rules alone will never make for a truly successful and effective FOI scheme. It also needs something else — commitment — and that's the real challenge."

Mitchinson pointed to the significant changes in attitude in the U.S. after President Clinton made a strong public commitment to freedom of information. "Although we're still a long way in Ontario from a Clinton-like commitment," he told the conference, "we have made some important and significant progress over the course of the past year."

"Commitments to performance standards, including response times in dealing with requests, have this year, for the first time, been included in Deputy Ministers' performance contracts. This is an extremely important step, which we have been advocating for several years, and former Secretary of Cabinet Rita Burak should be commended strongly for setting this process in motion before leaving office this past spring. Deputy Ministers must now account for ministry performance on FOI programs as part of the annual appraisal process with the Secretary of Cabinet."

Mitchinson then addressed "some challenges for the future."

"What we don't have in Ontario, and this is a common problem in many other jurisdictions as well, are enough internal champions for freedom of information. People in positions of influence and power who are prepared to commit themselves to the values inherent in the law and to do so publicly and proudly."

"Have any of you ever heard a senior government official in Ontario make a public commitment to the importance of our FOI law and to its effective administration? Has your CAO, Police

Continued on Page 7

Think RC/AC when in doubt about releasing personal information

When in doubt about disclosing personal information, it is better to err on the side of caution, Ontario Information and Privacy Commissioner Ann Cavoukian told the more than 300 delegates at *Workshop 2000: Access and Privacy in the Digital World*, Management Board Secretariat's annual fall access and privacy conference.

She also advised the delegates, most of whom were Freedom of Information and Privacy Co-ordinators from provincial or municipal organizations, that if their organization is undertaking a new initiative, a Privacy Impact Assessment should be conducted to identify, up front, any potential privacy issues that may have to be addressed.

The Commissioner launched her presentation by focusing on how privacy is becoming a major issue in many parts of the world. She observed that one cannot turn around today without bumping into a news story about another privacy violation or lawsuit. "What's even more interesting," she said, "is the volume of privacy legislation being debated and the number of major businesses which have, or are at least starting to, embrace privacy."

Citing an example, she said there are currently 39 privacy bills being debated in the New York state legislature. In Canada, the Commissioner noted, we now have Bill C-6, the federal *Personal Information Protection and Electronic Documents Act*. She also cited the IPC's consultation with the Ministry of Consumer and Commercial Relations, which just wrapped-up, regarding a made-in-Ontario private sector privacy law, and the health information privacy consultation currently under way. Ontarians also have the benefit of public sector freedom of information and privacy legislation, she added. "However," said the Commissioner, "I want everyone to know that while legislation — be it public or private sector focused — is an important component of any privacy scheme, education, training and above all, sound judgment is also just as necessary to ensure that a system which purports to protect people's privacy actually does the job."

With the expanding spotlight on privacy protection within the business community, survey after survey shows why e-commerce is not taking off as projected. Cavoukian cited some examples:

- 90% of people surveyed said privacy was the single most important issue for e-commerce to address,
- 79% don't use Web sites which require personal information.

Relating this corporate/business model to government, the Commissioner said that as the public becomes more privacy conscious and starts to take its business only to companies with sound privacy policies and practices, it will begin to have different expectations of government regarding the personal information that the government holds. She listed five key questions that need to be answered *before*, not after, collection, use, or disclosure of personal information:

- Why are you asking?
- How will my information be used?
- Who will be able to see my information?
- Will there be any secondary uses?
- How can I control my data?

The Commissioner emphasized that privacy is not just about anonymity, but about choice — the choice that an informed person makes regarding the use of his or her own personal information.

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20 *IPC Practices* still available

With the creation of the IPC's *Code of Procedure* and the *Practice Directions*, 10 of the 30 *IPC Practices* – those that dealt with appeals – have been superseded.

Here is an updated list of *IPC Practices* that shows which have been superseded, and by what, and the 20 *Practices* that are still available. The remaining *Practices* deal with issues related to requests or privacy.

IPC Practices

No. 1: *Drafting a Letter Refusing Access to a Record*

No. 2: *Copying Information to Individuals Inside and Outside an Institution*

No. 3: *Providing Records to the IPC* **(superseded by *Code Practice Direction 1*)**

No. 4: *Mediation: What an Institution Can Expect* **(superseded by *Code section 6*)**

No. 5: *Third Party Information at the Request Stage*

No. 6: *Raising Discretionary Exemptions During an Appeal* **(superseded by *Code section 11*)**

No. 7: *The Collection and Use of the Social Insurance Number*

No. 8: *Providing Notice of Collection*

No. 9: *Responding to Requests for Personal Information*

No. 10: *Video Surveillance: The Privacy Implications*

No. 11: *Audits and the Collection of Personal Information*

No. 12: *Increasing the Effectiveness of Representations* **(superseded by *Code Practice Direction 2, 3, 4, 5*)**

No. 13: *Affidavit Evidence* **(superseded by *Code Practice Direction 6*)**

No. 14: *The Indirect Collection of Personal Information*

No. 15: *Clarifying Access Requests*

No. 16: *Maintaining the Confidentiality of Requesters and Privacy Complainants*

No. 17: *Processing Privacy Complaints*

No. 18: *How to Protect Personal Information in the Custody of a Third Party*

No. 19: *Tips on Protecting Privacy*

No. 20: *Privacy and Confidentiality When Working Outside the Office*

No. 21: *Privacy of Personnel Files*

No. 22: *Routine Disclosure/Active Dissemination (RD/AD) of Government Information*

No. 23: *Preparing the Records Package for an Appeal* **(superseded by *Code Practice Direction 1*)**

No. 24: *Q's and A's for Managing Electronic Mail Systems*

No. 25: *You and Your Personal Information at the Ministry of Transportation*

No. 26: *Safe and Secure Disposal Procedures for Municipal Institutions*

No. 27: *Appeals Involving Third Party Commercial, Financial and Related Information* **(superseded by *Code Practice Direction 4*)**

No. 28: *Reconsideration of Appeal Decisions* **(superseded by *Code section 18*)**

No. 29: *Appeals Involving Personal (Third Party) Information* **(superseded by *Code Practice Direction 4*)**

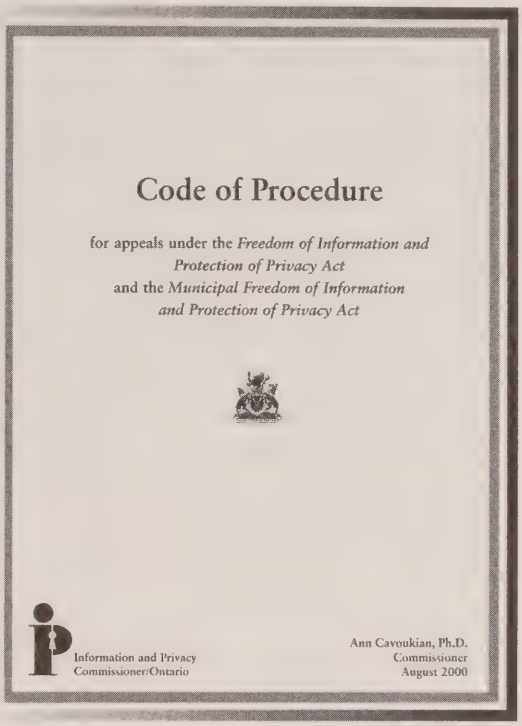
No. 30: *Submitting and sharing of representations in an inquiry* **(superseded by *Code Practice Direction 7*)**

Code of Procedure

CONTINUED FROM PAGE 1

guidelines for parties involved in an appeal, and 10 *Practice Directions*, which deal with procedural issues in a more detailed and specific way. The *Code* and *Practice Directions* supersede a number of the *IPC Practices* (see separate story). All institutions that had at least one appeal in the past year have been sent a copy of the *Code*. It is also available on the IPC's Web site, at <www.ipc.on.ca>.

Rather than introducing changes, or setting out a new approach or process, the *Code* was created to codify the IPC's existing practices. Almost all of the content reflects what the IPC already does. The *Code* outlines the process for initiating an appeal and what may transpire at the Intake, Mediation and Adjudication stages. It explains how special types of appeals, such as Straightforward Appeals and Reasonable Search Appeals, are conducted. It also covers subjects ranging from discretionary exemption claims to constitutional questions. The *Code* also sets out the conditions under which a reconsideration is undertaken.



The *Practice Directions* deal with such topics as providing records to the IPC during an appeal, and guidelines for individuals whose personal information is at issue in an appeal. There are also guidelines for parties whose commercial or business information is at issue in an appeal. Institutions are given guidelines for making representations. Affidavits are discussed in detail, with a sample affidavit provided.

"Publication of the Code demonstrates the IPC's ongoing commitment to the principles of accessibility, active dissemination and free-flowing information," said Commissioner Cavoukian. "All who consult it, whether appellants, affected parties or institutions, will have a much better understanding of why and how process decisions regarding an appeal are made."

The IPC welcomes feedback on the *Code*. Contacts are John Higgins, Legal Counsel, at (416) 326-3941 (e-mail: jhiggins@ipc.on.ca), or David Goodis, Manager of Adjudication, at (416) 326-0006 (e-mail: dgoodis@ipc.on.ca).

Practice Directions released by IPC

HERE ARE THE 10 *PRACTICE DIRECTIONS* THAT ARE part of the IPC's new *Code of Procedures*.

No. 1: *Providing records to the IPC during an appeal*

No. 2: *Representations: general guidelines*

No. 3: *Guidelines for individuals whose personal information is at issue in an appeal*

No. 4: *Guidelines for parties whose commercial or business information is at issue in an appeal*

No. 5: *Guidelines for institutions in making representations*

No. 6: *Affidavit and other evidence*

No. 7: *Sharing of representations*

No. 8: *Reasonable search appeals*

No. 9: *Constitutional questions*

No. 10: *Appeal fees*

Each of the *Practice Directions*, and the *Code*, can be found on the IPC's Web site: www.ipc.on.ca.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1804-F
(Appeal PA-990362-1)

This is the final order for an appeal involving a request under the *Act* by a journalist to the Ontario Realty Corporation (ORC) for information pertaining to all properties sold by the ORC since 1995.

The records at issue were five lists, which included the name of the purchaser (individual or business), the legal description of the property, the closing date, a project number assigned by the ORC, and the purchase price. The ORC granted partial access to the information regarding the business purchasers and denied access to the remaining records in this category on the basis of section 17(1) (third party information) of the *Act*. The ORC denied access to all of the information regarding individual purchasers citing the exemption at section 21(1) (invasion of privacy).

In Interim Order PO-1786-I, the IPC ordered disclosure of all information relating to the business purchasers on the basis that it did not qualify for exemption under section 17. The IPC also found that information relating to the individual purchasers fit within the scope of the section 21(3)(f) presumption (financial information).

The IPC requested submissions on whether section 23 of the *Act* applied — where a compelling public interest in the disclosure of the records relating to the individual purchasers outweighed the section 21 exemption.

The appellant provided evidence that the sale of property by the ORC had been the subject of current and ongoing media debate. In addition, the IPC found the fact that the land dealings of the ORC had been given priority attention by the ORC, the provincial government and law enforcement authorities indicated there was a strong interest or attention involving this particular public agency. The IPC held that the names, locations, and purchase prices paid by various purchasers were directly related to the strong interest in the ORC dealings, and their disclosure would serve to inform the public. For these reasons, the IPC found there was a compelling public interest in the disclosure of the individual purchasers' personal information.

In addition, the IPC was persuaded by the appellant's arguments that the information contained in the records was the same information that was already accessible through the land registry system. The fact that this information was publicly available lessened the individual purchasers' expectation of confidentiality, and therefore rendered it less sensitive.

When the IPC balanced the demonstrated, current and compelling public interest in disclosure against a privacy interest that was at the lower end of relative seriousness and sensitivity, the balance was found to favour disclosure. As a result, the IPC found that the requirements of section 23 of the *Act* were present and ordered the ORC to disclose the personal information of the individual purchasers contained in the records.

Order MO-1323
(Appeal MA-990304-1)
Sault Ste. Marie Police Services Board

In this appeal, a mother sought access to the cassette tape from her deceased son's answering machine. The son had lived in an apartment in the mother's home and the mother had in the past listened to messages for her son, and had received messages on his machine for herself. The son apparently committed suicide. The mother discovered his body and was present when the police came. A friend of the mother later went into the son's apartment and found the tape, listened to it in the son's apartment, and then brought it to the mother who gave it to the police. The mother's subsequent request for access under the *Act* was denied under section 14(1) (invasion of privacy).

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Public
mmitment

CONTINUED
FROM PAGE 2

Chief or Deputy Minister ever written to staff of your organization making it clear that effective FOI administration is a key component of excellence in public service?"

Mitchinson focused on several specific ways of building commitment, including the government's Business Planning process.

"FOI is a corporate program, with a designated responsible minister, the Chair of Management Board.... Yet, surprisingly, at least to us, FOI and privacy programs are not identified as a core business of Management Board Secretariat, either on their own, or as part of a broader information management program area. This deficiency needs to be addressed, and the IPC will be calling on the Chair of Management Board to identify FOI and privacy as a core business of the ministry during the upcoming Business Planning cycle."

Mitchinson closed his address by emphasizing that this past year has been a *different* one for FOI administration in Ontario.

"The government has acknowledged the need for change and has demonstrated a willingness to work together with our Commission in improving the system." He cited the new Freedom of Information Guideline and the changes to the Deputy Minister performance contracts as "evidence of a changing attitude to our important FOI programs."

"These are important first steps. Our challenge in the upcoming year will be to ensure that these new approaches produce fundamental and meaningful results on the ground. That will require strong leadership and a willingness to continually challenge the status quo, which I recognize is often difficult. However, if we can all keep ourselves focused on the underlying value of the law, and ensure that it serves as our guidepost for decision making, we can and will have an FOI program in Ontario that lives up to the public accountability expectations of our law."

(The speech is available on the IPC's Web site: www.ipc.on.ca.)

Summaries

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ROM PAGE 6

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Recent publications and submissions

AMONG THE IPC PUBLICATIONS AND SUBMISSIONS released since the last edition of *Perspectives* was published, are:

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RC/AC

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All organizations, whether public or private, have a duty of care to protect the personal information they have in their custody or control, she said. "They are entrusted with this information by the public, who is often obligated to provide it. The custodian in turn, is obligated to safeguard that information. ...So think RC/AC, and if in doubt about disclosing any personal information — don't do it! Active containment should be the default — keep it within your safekeeping until you are confident that it may be properly disclosed under the *Act*."

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FALL 2000

ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian, Senior Adjudicator and Manager of Adjudication David Goodis (right), and Legal Counsel John Higgins — architects of the IPC's new Code of Procedure — examine the completed document.

Code of Procedure created as a guide

IN LINE WITH THE IPC'S OBJECTIVE OF transparency in the appeals process, Commissioner Ann Cavoukian has released a *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act*. The *Code* outlines the basic procedural steps in the various types of appeals under the *Acts*.

"The *Code* will benefit appellants, affected parties and institutions alike," says Assistant Commissioner Tom Mitchinson. "They will be in a better position to know how their appeal is processed. If anything is unclear, the *Code* will be a guide and should answer most questions." Mitchinson describes the *Code* as being a single, comprehensive document that covers the procedures in appeals from start to finish — a "one-stop" source. He emphasized that a special effort was made to use plain language throughout the document.

The *Code*, which applies to appeals made under both the provincial and municipal statutes, is in effect for all appeals that were received by the IPC's Tribunal Services Department on or after September 1, 2000. It is comprised of two parts: the main *Code*, which sets out basic procedural

CONTINUED ON PAGE 5

Public commitment to FOI needed MBS conference delegates told

Although the values underlying freedom of information laws — open, transparent, accountable and citizen-driven government — are embraced proudly and enthusiastically by the governments that introduce them, commitment to these values is hard to sustain over time, Tom Mitchinson, Assistant Commissioner, Ontario Information and Privacy Commission, told Management Board's annual access and privacy conference. "Secrecy is inherently attractive to governments, and demands for accountability through use of the law butt up against the instincts of self-protection on a daily basis. FOI laws need two things in place for any hope of success: **rules** and **commitment**."

"Over the course of the past year or so, we've made progress as a province in both of these areas. Today, I'd like to acknowledge these successes, and then go on to identify some of the challenges for the upcoming year."

He identified our laws as the most important set of "rules," maintaining: "We have strong and robust FOI laws in Ontario.... I'm sure we can all think of changes that would improve our statutory framework, but I would argue that our laws are fundamentally sound."

He reviewed a number of other rules, including the binding directives and guidelines issued by Management Board of Cabinet. "The Secretary of Management Board of Cabinet took a significant step in this area during this past year by agreeing to amend the Management Board Guideline on Freedom of Information." Mitchinson pointed out that the new guideline will more clearly reflect expectations for the effective administration of FOI programs throughout the government. "We had hoped for stronger requirements in certain areas," he said, "and we'll be pushing for improvements, but I don't want to underestimate the importance of the new guideline in more clearly defining expectations."

"So, I think we're making some progress in the area of rules," he told the conference.

"However, no matter how good and comprehensive your set of rules is, rules alone will never make for a truly successful and effective FOI scheme. It also needs something else — commitment — and that's the real challenge."

Mitchinson pointed to the significant changes in attitude in the U.S. after President Clinton made a strong public commitment to freedom of information. "Although we're still a long way in Ontario from a Clinton-like commitment," he told the conference, "we have made some important and significant progress over the course of the past year."

"Commitments to performance standards, including response times in dealing with requests, have this year, for the first time, been included in Deputy Ministers' performance contracts. This is an extremely important step, which we have been advocating for several years, and former Secretary of Cabinet Rita Burak should be commended strongly for setting this process in motion before leaving office this past spring. Deputy Ministers must now account for ministry performance on FOI programs as part of the annual appraisal process with the Secretary of Cabinet."

Mitchinson then addressed "some challenges for the future."

"What we don't have in Ontario, and this is a common problem in many other jurisdictions as well, are enough internal champions for freedom of information. People in positions of influence and power who are prepared to commit themselves to the values inherent in the law and to do so publicly and proudly."

"Have any of you ever heard a senior government official in Ontario make a public commitment to the importance of our FOI law and to its effective administration? Has your CAO, Police

Continued on Page 7

Think RC/AC when in doubt about releasing personal information

When in doubt about disclosing personal information, it is better to err on the side of caution, Ontario Information and Privacy Commissioner Ann Cavoukian told the more than 300 delegates at *Workshop 2000: Access and Privacy in the Digital World*, Management Board Secretariat's annual fall access and privacy conference.

She also advised the delegates, most of whom were Freedom of Information and Privacy Co-ordinators from provincial or municipal organizations, that if their organization is undertaking a new initiative, a Privacy Impact Assessment should be conducted to identify, up front, any potential privacy issues that may have to be addressed.

The Commissioner launched her presentation by focusing on how privacy is becoming a major issue in many parts of the world. She observed that one cannot turn around today without bumping into a news story about another privacy violation or lawsuit. "What's even more interesting," she said, "is the volume of privacy legislation being debated and the number of major businesses which have, or are at least starting to, embrace privacy."

Citing an example, she said there are currently 39 privacy bills being debated in the New York state legislature. In Canada, the Commissioner noted, we now have Bill C-6, the federal *Personal Information Protection and Electronic Documents Act*. She also cited the IPC's consultation with the Ministry of Consumer and Commercial Relations, which just wrapped-up, regarding a made-in-Ontario private sector privacy law, and the health information privacy consultation currently under way. Ontarians also have the benefit of public sector freedom of information and privacy legislation, she added. "However," said the Commissioner, "I want everyone to know that while legislation — be it public or private sector focused — is an important component of any privacy scheme, education, training and above all, sound judgment is also just as necessary to ensure that a system which purports to protect people's privacy actually does the job."

With the expanding spotlight on privacy protection within the business community, survey after survey shows why e-commerce is not taking off as projected. Cavoukian cited some examples:

- 90% of people surveyed said privacy was the single most important issue for e-commerce to address,
- 79% don't use Web sites which require personal information.

Relating this corporate/business model to government, the Commissioner said that as the public becomes more privacy conscious and starts to take its business only to companies with sound privacy policies and practices, it will begin to have different expectations of government regarding the personal information that the government holds. She listed five key questions that need to be answered *before*, not after, collection, use, or disclosure of personal information:

- Why are you asking?
- How will my information be used?
- Who will be able to see my information?
- Will there be any secondary uses?
- How can I control my data?

The Commissioner emphasized that privacy is not just about anonymity, but about choice — the choice that an informed person makes regarding the use of his or her own personal information.

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20 *IPC Practices* still available

With the creation of the IPC's *Code of Procedure* and the *Practice Directions*, 10 of the 30 *IPC Practices* – those that dealt with appeals – have been superseded.

Here is an updated list of *IPC Practices* that shows which have been superseded, and by what, and the 20 *Practices* that are still available. The remaining *Practices* deal with issues related to requests or privacy.

IPC Practices

No. 1: *Drafting a Letter Refusing Access to a Record*

No. 2: *Copying Information to Individuals Inside and Outside an Institution*

No. 3: *Providing Records to the IPC* **(superseded by *Code Practice Direction 1*)**

No. 4: *Mediation: What an Institution Can Expect* **(superseded by *Code section 6*)**

No. 5: *Third Party Information at the Request Stage*

No. 6: *Raising Discretionary Exemptions During an Appeal* **(superseded by *Code section 11*)**

No. 7: *The Collection and Use of the Social Insurance Number*

No. 8: *Providing Notice of Collection*

No. 9: *Responding to Requests for Personal Information*

No. 10: *Video Surveillance: The Privacy Implications*

No. 11: *Audits and the Collection of Personal Information*

No. 12: *Increasing the Effectiveness of Representations* **(superseded by *Code Practice Direction 2, 3, 4, 5*)**

No. 13: *Affidavit Evidence* **(superseded by *Code Practice Direction 6*)**

No. 14: *The Indirect Collection of Personal Information*

No. 15: *Clarifying Access Requests*

No. 16: *Maintaining the Confidentiality of Requesters and Privacy Complainants*

No. 17: *Processing Privacy Complaints*

No. 18: *How to Protect Personal Information in the Custody of a Third Party*

No. 19: *Tips on Protecting Privacy*

No. 20: *Privacy and Confidentiality When Working Outside the Office*

No. 21: *Privacy of Personnel Files*

No. 22: *Routine Disclosure/Active Dissemination (RD/AD) of Government Information*

No. 23: *Preparing the Records Package for an Appeal* **(superseded by *Code Practice Direction 1*)**

No. 24: *Q's and A's for Managing Electronic Mail Systems*

No. 25: *You and Your Personal Information at the Ministry of Transportation*

No. 26: *Safe and Secure Disposal Procedures for Municipal Institutions*

No. 27: *Appeals Involving Third Party Commercial, Financial and Related Information* **(superseded by *Code Practice Direction 4*)**

No. 28: *Reconsideration of Appeal Decisions* **(superseded by *Code section 18*)**

No. 29: *Appeals Involving Personal (Third Party) Information* **(superseded by *Code Practice Direction 4*)**

No. 30: *Submitting and sharing of representations in an inquiry* **(superseded by *Code Practice Direction 7*)**

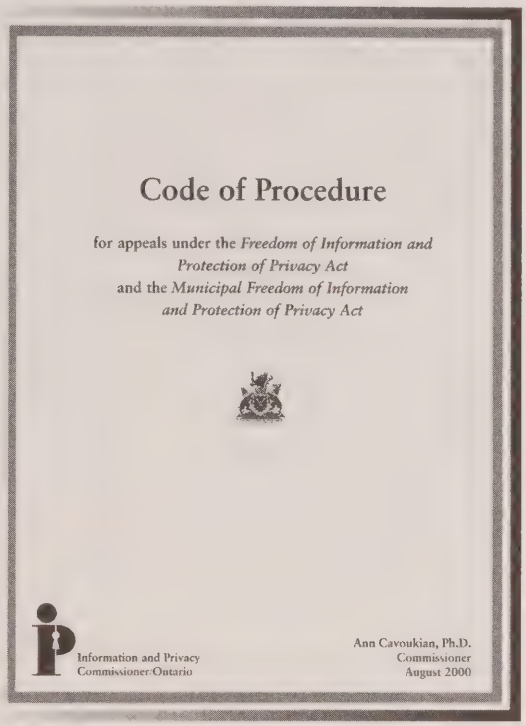
Code of Procedure

CONTINUED FROM PAGE 1

guidelines for parties involved in an appeal, and 10 *Practice Directions*, which deal with procedural issues in a more detailed and specific way. The *Code* and *Practice Directions* supersede a number of the *IPC Practices* (see separate story).

All institutions that had at least one appeal in the past year have been sent a copy of the *Code*. It is also available on the IPC's Web site, at <www.ipc.on.ca>.

Rather than introducing changes, or setting out a new approach or process, the *Code* was created to codify the IPC's existing practices. Almost all of the content reflects what the IPC already does. The *Code* outlines the process for initiating an appeal and what may transpire at the Intake, Mediation and Adjudication stages. It explains how special types of appeals, such as Straightforward Appeals and Reasonable Search Appeals, are conducted. It also covers subjects ranging from discretionary exemption claims to constitutional questions. The *Code* also sets out the conditions under which a reconsideration is undertaken.



The *Practice Directions* deal with such topics as providing records to the IPC during an appeal, and guidelines for individuals whose personal information is at issue in an appeal. There are also guidelines for parties whose commercial or business information is at issue in an appeal. Institutions are given guidelines for making representations. Affidavits are discussed in detail, with a sample affidavit provided.

"Publication of the Code demonstrates the IPC's ongoing commitment to the principles of accessibility, active dissemination and free-flowing information," said Commissioner Cavoukian. "All who consult it, whether appellants, affected parties or institutions, will have a much better understanding of why and how process decisions regarding an appeal are made."

The IPC welcomes feedback on the *Code*. Contacts are John Higgins, Legal Counsel, at (416) 326-3941 (e-mail: jhiggins@ipc.on.ca), or David Goodis, Manager of Adjudication, at (416) 326-0006 (e-mail: dgoodis@ipc.on.ca).

Practice Directions released by IPC

HERE ARE THE 10 *PRACTICE DIRECTIONS* THAT ARE part of the IPC's new *Code of Procedures*.

No. 1: *Providing records to the IPC during an appeal*

No. 2: *Representations: general guidelines*

No. 3: *Guidelines for individuals whose personal information is at issue in an appeal*

No. 4: *Guidelines for parties whose commercial or business information is at issue in an appeal*

No. 5: *Guidelines for institutions in making representations*

No. 6: *Affidavit and other evidence*

No. 7: *Sharing of representations*

No. 8: *Reasonable search appeals*

No. 9: *Constitutional questions*

No. 10: *Appeal fees*

Each of the *Practice Directions*, and the *Code*, can be found on the IPC's Web site: www.ipc.on.ca.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1804-F
(Appeal PA-990362-1)

This is the final order for an appeal involving a request under the *Act* by a journalist to the Ontario Realty Corporation (ORC) for information pertaining to all properties sold by the ORC since 1995.

The records at issue were five lists, which included the name of the purchaser (individual or business), the legal description of the property, the closing date, a project number assigned by the ORC, and the purchase price. The ORC granted partial access to the information regarding the business purchasers and denied access to the remaining records in this category on the basis of section 17(1) (third party information) of the *Act*. The ORC denied access to all of the information regarding individual purchasers citing the exemption at section 21(1) (invasion of privacy).

In Interim Order PO-1786-I, the IPC ordered disclosure of all information relating to the business purchasers on the basis that it did not qualify for exemption under section 17. The IPC also found that information relating to the individual purchasers fit within the scope of the section 21(3)(f) presumption (financial information).

The IPC requested submissions on whether section 23 of the *Act* applied — where a compelling public interest in the disclosure of the records relating to the individual purchasers outweighed the section 21 exemption.

The appellant provided evidence that the sale of property by the ORC had been the subject of current and ongoing media debate. In addition, the IPC found the fact that the land dealings of the ORC had been given priority attention by the ORC, the provincial government and law enforcement authorities indicated there was a strong interest or attention involving this particular public agency. The IPC held that the names, locations, and purchase prices paid by various purchasers were directly related to the strong interest in the ORC dealings, and their disclosure would serve to inform the public. For these reasons, the IPC found there was a compelling public interest in the disclosure of the individual purchasers' personal information.

In addition, the IPC was persuaded by the appellant's arguments that the information contained in the records was the same information that was already accessible through the land registry system. The fact that this information was publicly available lessened the individual purchasers' expectation of confidentiality, and therefore rendered it less sensitive.

When the IPC balanced the demonstrated, current and compelling public interest in disclosure against a privacy interest that was at the lower end of relative seriousness and sensitivity, the balance was found to favour disclosure. As a result, the IPC found that the requirements of section 23 of the *Act* were present and ordered the ORC to disclose the personal information of the individual purchasers contained in the records.

Order MO-1323
(Appeal MA-990304-1)
Sault Ste. Marie Police Services Board

In this appeal, a mother sought access to the cassette tape from her deceased son's answering machine. The son had lived in an apartment in the mother's home and the mother had in the past listened to messages for her son, and had received messages on his machine for herself. The son apparently committed suicide. The mother discovered his body and was present when the police came. A friend of the mother later went into the son's apartment and found the tape, listened to it in the son's apartment, and then brought it to the mother who gave it to the police. The mother's subsequent request for access under the *Act* was denied under section 14(1) (invasion of privacy).

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Public
nmitment
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Chief or Deputy Minister ever written to staff of your organization making it clear that effective FOI administration is a key component of excellence in public service?"

Mitchinson focused on several specific ways of building commitment, including the government's Business Planning process.

"FOI is a corporate program, with a designated responsible minister, the Chair of Management Board.... Yet, surprisingly, at least to us, FOI and privacy programs are not identified as a core business of Management Board Secretariat, either on their own, or as part of a broader information management program area. This deficiency needs to be addressed, and the IPC will be calling on the Chair of Management Board to identify FOI and privacy as a core business of the ministry during the upcoming Business Planning cycle."

Mitchinson closed his address by emphasizing that this past year has been a *different* one for FOI administration in Ontario.

"The government has acknowledged the need for change and has demonstrated a willingness to work together with our Commission in improving the system." He cited the new Freedom of Information Guideline and the changes to the Deputy Minister performance contracts as "evidence of a changing attitude to our important FOI programs."

"These are important first steps. Our challenge in the upcoming year will be to ensure that these new approaches produce fundamental and meaningful results on the ground. That will require strong leadership and a willingness to continually challenge the status quo, which I recognize is often difficult. However, if we can all keep ourselves focused on the underlying value of the law, and ensure that it serves as our guidepost for decision making, we can and will have an FOI program in Ontario that lives up to the public accountability expectations of our law."

(The speech is available on the IPC's Web site: www.ipc.on.ca.)

Summaries
Continued
rom Page 6

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INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

A special guest at a recent *Information Technology Association of Canada* meeting, Commissioner Ann Cavoukian (second from left) heard arguments by members of the University of Toronto debate club on whether privacy is a human right. The Commissioner then delivered a presentation on the privacy issues related to smart cards. Pictured (from left to right) with the Commissioner are students Michael Meeuwis, Stephanie Wilde, Rory McKeown, and Jenna Slotin.

Library Outreach program expanded

PHASE TWO OF THE INFORMATION AND PRIVACY Commission's *Library Outreach* program is being rolled out this spring. The program was started last year by Commissioner Ann Cavoukian to complement a number of other new initiatives launched to help raise public awareness of access and privacy issues.

A letter from the Commissioner and copies of the IPC's core brochures were distributed to each of the more than 900 libraries in Ontario last year, with the assistance of three library organizations.

In conjunction with another IPC program, four public information meetings – co-sponsored by the IPC and individual libraries – were held in different regions of Ontario.

"In various jurisdictions," said Commissioner Cavoukian, "freedom of information commissioners and library heads have worked jointly to promote public access to government records. I am delighted with the response we have received from the Southern Ontario Library Services, the Ontario Library Services – North, and the

Recent IPC publications

THE IPC HAS ISSUED THE FOLLOWING PUBLICATIONS since the last edition of *Perspectives*:

1. *Submission to the Ministry of Health and Long-Term Care in Response to Ontario's Proposed Personal Health Information Privacy Legislation for the Health Sector* (Health Sector Privacy Rules). October 2000.
2. *Routine Disclosure/Active Dissemination – A Best Practice in the City of Mississauga.* November 2000.
3. *Municipal Freedom of Information and Protection of Privacy Act – How it Works at the Town of Milton.* November 2000.
4. *Submission and Speaking Notes for presentation to the Standing Committee on General Government reviewing Bill 159, the Personal Health Information Privacy Act, 2000.* February 2001.
5. *Suggested wording for changes to Bill 159, the Personal Health Information Privacy Act, 2000.* February 2001.
6. *F.A.Q.: Access and Privacy in the School System.* February 2001.
7. *Police Officers' Notebooks and the Municipal Freedom of Information and Protection of Privacy Act: A Guide for Police Officers.* February 2001.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Library Outreach program expanded

CONTINUED FROM PAGE

Toronto Library. They helped us distribute more than 25,000 brochures to libraries to help raise the public's awareness of its rights to access information and to have personal information protected."

In phase two, the IPC will be providing speakers for a number of the regional library staff conferences across Ontario.

These 30-minute presentations will include a brief review of the provincial and municipal Freedom of Information and Protection of Privacy legislation, and a discussion of some of the common questions that the IPC and libraries receive about individuals' rights to access government-held information and their right to privacy protection.

The IPC speaker will also explain to library staff what resources are available on the IPC's Web site.

Under the *Library Outreach* program, each library has been advised of how it can obtain more copies of the three core brochures – *Access to Information under Ontario's Information and Privacy Acts, The Appeal Process and Ontario's Information and Privacy Commissioner,* and *Your Privacy and Ontario's Information and Privacy Commissioner.* These and other publications can be ordered through the IPC's Communications Department (416-326-3333 or 1-800-387-0073) or downloaded from the IPC's Web site (www.ipc.on.ca).

Library board Freedom of Information and Privacy Co-ordinators or other library staff who would like more information about the IPC's *Library Outreach* program can contact Bob Spence, IPC Communications Co-ordinator, at 416-326-3939.

New privacy complaint process

THE COLLECTION OF PERSONAL INFORMATION FROM residents of Ontario by provincial and municipal government organizations — and the use, disclosure and disposal of that information — is governed by rules established under Ontario's *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*).

Anyone who believes that a provincial or municipal government organization has failed to comply with one of the *Acts* – and that his or her privacy has been compromised as a result – may complain to the Information and Privacy Commissioner.

The IPC recently created a new privacy complaint process. Here is a brief outline:

More flexibility

Applying the same process to all privacy complaints received does not provide the flexibility to accommodate the unique needs of each individual complaint. Consequently, the IPC has designed a system that enables less complex complaints to be handled in a summary fashion and allots more complex cases enough time and resources to facilitate a satisfactory settlement. All privacy complaints are analyzed at the *intake stage* to determine the best route to proceed.

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For the vast majority of files, an intake analyst will complete various intake functions, including contacting the complainant to clarify the privacy issues and to explain the IPC procedures for processing privacy complaints. The intake analyst will also contact the government organization that the complainant has cited to obtain its position about the complaint and to discuss the possibility of settlement.

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The Commissioner has delegated authority to the registrar and intake analysts to "screen out" complaints where the IPC has no jurisdiction or where it is determined that this type of file should not proceed through the privacy complaint process. Privacy complaints may therefore be dismissed at the intake stage.

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The registrar will stream all other privacy complaint files to the *investigation stream*. A mediator will be assigned to clarify the complaint, contact the parties, gather information, and attempt a settlement. If the file is not settled, the mediator will send the parties a *draft privacy complaint report*, which includes a summary of the complaint; a discussion of the information obtained during the investigation, conclusions, and findings (if any). The parties are given an opportunity to comment on any factual errors and/or omissions in the *draft privacy complaint report*. The mediator will then send the parities a *final privacy complaint report* under his/her signature, with the endorsement of the Commissioner or Assistant Commissioner, and will later follow-up with the organization to ensure that any recommendations have been implemented.

Advantages of new process

The main advantages are:

- Complaints that the IPC believes should not proceed through the privacy complaint process will be screened out.

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Mediation success stories

THE IPC IS COMMITTED TO MEDIATION AS THE preferred method of dispute resolution. To help demonstrate its commitment, and to encourage parties to think creatively about resolving appeals informally, a new regular feature, **Mediation Success Stories**, is being added to *IPC Perspectives*.

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The company objected to the Ministry's decision to grant access to the records and filed a third party appeal.

In discussions with the mediator, it became clear that the requester was specifically interested in finding out whether the company intended to harvest sunken logs in a particular bay. The requester advised the mediator that he believed there are potentially toxic chemicals at the bottom of the bay, and was concerned that log harvesting may cause disruptions to the ecosystem.

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The board granted partial access to the records, and claimed the exemptions found in sections 10(1)(a) and (c) of the municipal *Act* (third party information) to deny access to the remainder.

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During mediation, the third party consented to the disclosure of additional information. The appellant then narrowed the scope of the request to four items. This removed the records to which section 14 had been applied.

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The *final privacy complaint reports* for **unresolved** files will include the name of the institution and be made available to the public on the IPC Web site, unless the privacy of the complainant might be compromised by doing so.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

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Appeal MA-990197
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The City of Toronto (the City) received a request from a member of the media for access to the list of the names of individual contributors to municipal candidates in the previous municipal election. Although these names, and the amounts each individual contributed, were available in a hard-copy form for the public to view under the provisions of the *Municipal Elections Act*, the requester stated that he wanted an electronic version of the records.

The City denied access to the electronic records, stating that the electronic version of these records, unlike the publicly available hard copies, were prepared by the City Clerk solely for the purpose of administering a contribution rebate program. Furthermore, the City stated that the records were publicly available and therefore exempt under section 15(a) of the *Municipal Freedom of Information and Protection of Privacy Act*, and that the disclosure of the records would contravene section 14 (personal privacy) of the *Act* because the records contained the personal information of identifiable individuals.

The requester (now the appellant) appealed the City's decision, arguing that the records were not publicly available in an electronic format. He then identified that, as the personal information was already public, its disclosure could not be an unjustified invasion of privacy under section 14(1)(f). As well, the appellant stated that the *Act* authorized the disclosure of this personal information, because the information was collected to create a record available to the public under section 14(1)(c) and because under section 14(1)(d), its disclosure was authorized under the *Municipal Elections Act*. Finally, the appellant argued that the disclosure of this information was in the public interest, and that section 16 applied.

The IPC followed past precedents on the issue of access to electronic versions of records. The records are not exempt under section 15(a) because the records were not publicly available in electronic format, and the electronic database contained slightly more information than was in the public record. The IPC also found that sections (14)(1)(c), (d) and (f) did not apply. These findings were based on the fact that the electronic version of the records contained slightly different information than the public records, and was prepared primarily for administration purposes. As well, the IPC identified concerns surrounding the possible manipulation and modification of records provided in an electronic version, as opposed to hard copies of similar information. Finally, the public interest override was found not to apply, as the public interest was satisfied by the disclosure of the hard-copies of the information available to the public.

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Assistant Commissioner Tom Mitchinson included a postscript calling for public debate concerning the issue of access to records in electronic format. He identified that public records containing personal information are a "justified" invasion of privacy, but an invasion nonetheless. He stressed that the re-characterization of "unjustified" to "justified" is a difficult and fundamental one, and one that cannot be made in the absence of debate and clarity on the issue.

The appellant has applied to the Divisional Court for a judicial review of this order.

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April 23. John Swaigen, a member of the IPC's legal team, will address the legal aid clinics of eastern Ontario on access and privacy at their spring session in Picton.

April 24. Commissioner Ann Cavoukian will be addressing the Public Affairs Association of Canada on privacy issues.

Commissioner Ann Cavoukian addressing a public meeting.

April 30. Mike Gurski, a member of the IPC's policy team, will speak about privacy issues in marketing at the Channels 2001 conference, hosted by the Institute for International Research.

May 3. The Commissioner will present on the electronic health care environment to a group of health care professionals called the "Canadian Users Group."

May 17. An IPC team, led by Assistant Commissioner Tom Mitchinson, will be making a number of presentations in the Niagara Region as part of the IPC's *Reaching out to Ontario* program.

May 26. The Canadian Institute for Health Information's *E-Health* 2001 annual conference will feature a presentation by Commissioner Cavoukian on PHIPA and related topics.

June 4. Commissioner Cavoukian will talk about the Ontario experience with privacy and citizen expectations at an Ontario Federal Council meeting.

June 10. The Commissioner will speak to the Centre for Health Information in Newfoundland on the importance of health information privacy.

June 14. Commissioner Cavoukian with speak on the privacy of electronic health records at the 13th Annual Information Technology Security Symposium.

June 18. At the conference, *Meeting New Standards for Managing Privacy of Health Information*, the Commissioner will talk about government initiatives for managing health information privacy.

June 25. In New York City, Ken Anderson, Director of Corporate Services and General Counsel, will speak about privacy law at the Practising Law Institute's annual conference.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC

***Q:** Both the printed Directory of Institutions and the Directory of Records are out of date. Can I get updated copies of these from the IPC?*

A: Both of these directories are maintained by Management Board Secretariat's Corporate Freedom of Information and Privacy Office. Rather than continue to print directories once a year, that office opted to provide more frequently updated directories on its online site. To obtain the most up-to-date versions, visit the MBS Web site: www.gov.on.ca/MBS/english/fip/.

Summaries

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Act (the *Act*). The Township denied access to the information pursuant to section 14 (personal privacy) of the *Act*. The Association appealed the Township's decision and the adjudicator sent a Notice of Inquiry to the Township and six affected persons.

Counsel for one affected person wrote to the adjudicator stating that the "Southgate Resident and Ratepayer Association" was not registered, nor was there a corporation listed under that name. In response, the adjudicator sent a letter to all the parties seeking representations on whether the Association had capacity to make a request and file an appeal under the *Act*. The adjudicator indicated that this issue would depend on whether the word "person" in sections 4(1) and 39(1) of the *Act* could be interpreted to include the Association.

The Township submitted that the term "person," as defined by the *Interpretation Act*, does not include unincorporated associations and as such the Association is not a person within the meaning of section 4(1) of the *Act*. The Association argued that the right of access to information under the *Act* is not comparable to the right to sue or be sued, and thus the common law restrictions on capacity were not applicable.

The adjudicator reviewed two Ontario court decisions which addressed the issue of capacity in the context of a civil action and judicial review proceeding and concluded that the common law rule of capacity, applicable to court processes, was not determinative of the statutory right to commence a proceeding before a government agency and to appeal to a tribunal. The adjudicator found that in these cases, the issue of standing must be determined within the statutory context and by looking at the enabling statute of the relevant agency or tribunal.

In this case, the adjudicator concluded that the word "person" in sections 4(1) and 39(1) of the *Act* should be given a broad and liberal meaning to include unincorporated associations. The adjudicator examined the purposes of the *Act* and held that a narrow interpretation of the word "person" was not consistent with information being available to the general public pursuant to section 1(a)(i). The adjudicator stated: "The Legislature intended that government information which is not exempt should be disseminated to the public at large, and restrictions on the capacity of an individual or organization to make a request based on technical grounds, such as whether an organization is incorporated, would undermine this intention."

As a result, the adjudicator found that the Association has the capacity to make a request and to appeal any decision under the *Act* to the same extent as a natural person or a corporation.

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INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

Ontario

A special guest at a recent *Information Technology Association of Canada* meeting, Commissioner Ann Cavoukian (second from left) heard arguments by members of the University of Toronto debate club on whether privacy is a human right. The Commissioner then delivered a presentation on the privacy issues related to smart cards. Pictured (from left to right) with the Commissioner are students Michael Meeuwis, Stephanie Wilde, Rory McKeown, and Jenna Slotin.

Library Outreach program expanded

PHASE TWO OF THE INFORMATION AND PRIVACY Commission's *Library Outreach* program is being rolled out this spring. The program was started last year by Commissioner Ann Cavoukian to complement a number of other new initiatives launched to help raise public awareness of access and privacy issues.

A letter from the Commissioner and copies of the IPC's core brochures were distributed to each of the more than 900 libraries in Ontario last year, with the assistance of three library organizations.

In conjunction with another IPC program, four public information meetings – co-sponsored by the IPC and individual libraries – were held in different regions of Ontario.

"In various jurisdictions," said Commissioner Cavoukian, "freedom of information commissioners and library heads have worked jointly to promote public access to government records. I am delighted with the response we have received from the Southern Ontario Library Services, the Ontario Library Services – North, and the

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this Issue:

Recent IPC publications

THE IPC HAS ISSUED THE FOLLOWING PUBLICATIONS since the last edition of *Perspectives*:

1. *Submission to the Ministry of Health and Long-Term Care in Response to Ontario's Proposed Personal Health Information Privacy Legislation for the Health Sector* (Health Sector Privacy Rules). October 2000.
2. *Routine Disclosure/Active Dissemination – A Best Practice in the City of Mississauga.* November 2000.
3. *Municipal Freedom of Information and Protection of Privacy Act – How it Works at the Town of Milton.* November 2000.
4. *Submission and Speaking Notes for presentation to the Standing Committee on General Government reviewing Bill 159, the Personal Health Information Privacy Act, 2000.* February 2001.
5. *Suggested wording for changes to Bill 159, the Personal Health Information Privacy Act, 2000.* February 2001.
6. *F.A.Q.: Access and Privacy in the School System.* February 2001.
7. *Police Officers' Notebooks and the Municipal Freedom of Information and Protection of Privacy Act: A Guide for Police Officers.* February 2001.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Library Outreach program expanded

CONTINUED FROM PAGE 1

Toronto Library. They helped us distribute more than 25,000 brochures to libraries to help raise the public's awareness of its rights to access information and to have personal information protected."

In phase two, the IPC will be providing speakers for a number of the regional library staff conferences across Ontario.

These 30-minute presentations will include a brief review of the provincial and municipal Freedom of Information and Protection of Privacy legislation, and a discussion of some of the common questions that the IPC and libraries receive about individuals' rights to access government-held information and their right to privacy protection.

The IPC speaker will also explain to library staff what resources are available on the IPC's Web site.

Under the *Library Outreach* program, each library has been advised of how it can obtain more copies of the three core brochures – *Access to Information under Ontario's Information and Privacy Acts, The Appeal Process and Ontario's Information and Privacy Commissioner,* and *Your Privacy and Ontario's Information and Privacy Commissioner.* These and other publications can be ordered through the IPC's Communications Department (416-326-3333 or 1-800-387-0073) or downloaded from the IPC's Web site (www.ipc.on.ca).

Library board Freedom of Information and Privacy Co-ordinators or other library staff who would like more information about the IPC's *Library Outreach* program can contact Bob Spence, IPC Communications Co-ordinator, at 416-326-3939.

New privacy complaint process

The collection of personal information from residents of Ontario by provincial and municipal government organizations — and the use, disclosure and disposal of that information — is governed by rules established under Ontario's *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*).

Anyone who believes that a provincial or municipal government organization has failed to comply with one of the *Acts* – and that his or her privacy has been compromised as a result – may complain to the Information and Privacy Commissioner.

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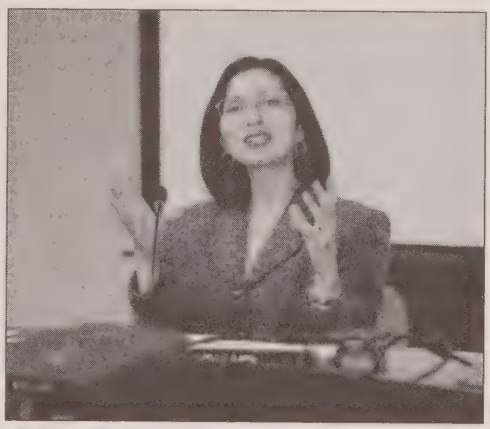
April 19. Brian Beamish, Director of Policy and Compliance, will participate on a panel that will explore *Promoting Confidence and Trust in Government Online to Canadian Citizens*, at the Security & Privacy for Government Online conference.

April 23. John Swaigen, a member of the IPC's legal team, will address the legal aid clinics of eastern Ontario on access and privacy at their spring session in Picton.

April 24. Commissioner Ann Cavoukian will be addressing the Public Affairs Association of Canada on privacy issues.



Commissioner Ann Cavoukian addressing a public meeting.

April 30. Mike Gurski, a member of the IPC's policy team, will speak about privacy issues in marketing at the Channels 2001 conference, hosted by the Institute for International Research.

May 3. The Commissioner will present on the electronic health care environment to a group of health care professionals called the "Canadian Users Group."

May 17. An IPC team, led by Assistant Commissioner Tom Mitchinson, will be making a number of presentations in the Niagara Region as part of the IPC's *Reaching out to Ontario* program.

May 26. The Canadian Institute for Health Information's *E-Health* 2001 annual conference will feature a presentation by Commissioner Cavoukian on PHIPA and related topics.

June 4. Commissioner Cavoukian will talk about the Ontario experience with privacy and citizen expectations at an Ontario Federal Council meeting.

June 10. The Commissioner will speak to the Centre for Health Information in Newfoundland on the importance of health information privacy.

June 14. Commissioner Cavoukian with speak on the privacy of electronic health records at the 13th Annual Information Technology Security Symposium.

June 18. At the conference, *Meeting New Standards for Managing Privacy of Health Information*, the Commissioner will talk about government initiatives for managing health information privacy.

June 25. In New York City, Ken Anderson, Director of Corporate Services and General Counsel, will speak about privacy law at the Practising Law Institute's annual conference.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

***Q:** Both the printed Directory of Institutions and the Directory of Records are out of date. Can I get updated copies of these from the IPC?*

A: Both of these directories are maintained by Management Board Secretariat's Corporate Freedom of Information and Privacy Office. Rather than continue to print directories once a year, that office opted to provide more frequently updated directories on its online site. To obtain the most up-to-date versions, visit the MBS Web site: www.gov.on.ca/MBS/english/fip/.

Summaries

CONTINUED FROM PAGE 6

Act (the *Act*). The Township denied access to the information pursuant to section 14 (personal privacy) of the *Act*. The Association appealed the Township's decision and the adjudicator sent a Notice of Inquiry to the Township and six affected persons.

Counsel for one affected person wrote to the adjudicator stating that the "Southgate Resident and Ratepayer Association" was not registered, nor was there a corporation listed under that name. In response, the adjudicator sent a letter to all the parties seeking representations on whether the Association had capacity to make a request and file an appeal under the *Act*. The adjudicator indicated that this issue would depend on whether the word "person" in sections 4(1) and 39(1) of the *Act* could be interpreted to include the Association.

The Township submitted that the term "person," as defined by the *Interpretation Act*, does not include unincorporated associations and as such the Association is not a person within the meaning of section 4(1) of the *Act*. The Association argued that the right of access to information under the *Act* is not comparable to the right to sue or be sued, and thus the common law restrictions on capacity were not applicable.

The adjudicator reviewed two Ontario court decisions which addressed the issue of capacity in the context of a civil action and judicial review proceeding and concluded that the common law rule of capacity, applicable to court processes, was not determinative of the statutory right to commence a proceeding before a government agency and to appeal to a tribunal. The adjudicator found that in these cases, the issue of standing must be determined within the statutory context and by looking at the enabling statute of the relevant agency or tribunal.

In this case, the adjudicator concluded that the word "person" in sections 4(1) and 39(1) of the *Act* should be given a broad and liberal meaning to include unincorporated associations. The adjudicator examined the purposes of the *Act* and held that a narrow interpretation of the word "person" was not consistent with information being available to the general public pursuant to section 1(a)(i). The adjudicator stated: "The Legislature intended that government information which is not exempt should be disseminated to the public at large, and restrictions on the capacity of an individual or organization to make a request based on technical grounds, such as whether an organization is incorporated, would undermine this intention."

As a result, the adjudicator found that the Association has the capacity to make a request and to appeal any decision under the *Act* to the same extent as a natural person or a corporation.

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VOLUME 10
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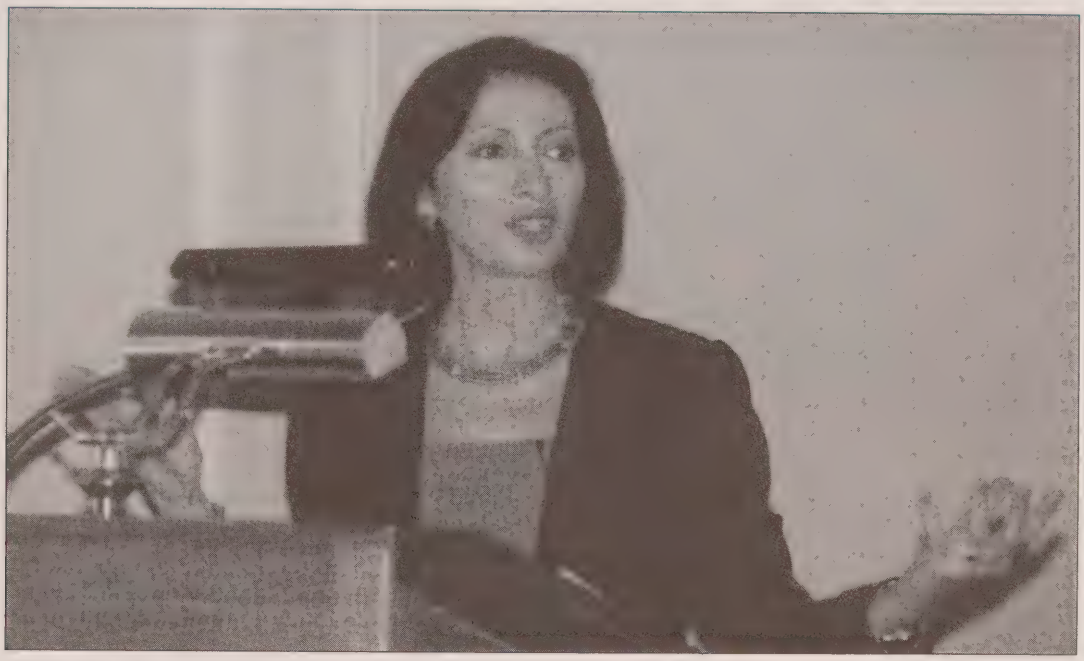
ANN CAVOUKIAN, Ph.D., COMMISSIONER



Commissioner Ann Cavoukian was a keynote speaker at The Human *Face of Privacy Technology* conference at the University of Toronto. The IPC and the Centre for Applied Cryptographic Research, University of Waterloo, co-sponsored the conference. See story on page 3.

Guidelines for using video surveillance cameras

Institutions governed by the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* that are considering implementing a video surveillance program must balance the benefits of video surveillance to the public against an individual's right to be free of unwarranted intrusion into his or her life.

"Pervasive, routine and random surveillance of ordinary, lawful public activities interferes with an individual's privacy," said Ontario Information and Privacy Commissioner Ann Cavoukian.

Guidelines for Using Video Surveillance Cameras in Public Places, a special publication recently released by the Commissioner, was created to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and, if so, how privacy protective measures can be built into the system.

CONTINUED ON PAGE 3

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Recent IPC publications

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6. The ***Privacy Diagnostic Tool (PDT)*** is a self-assessment program used to help businesses gauge their privacy readiness by comparing their information processes with international privacy principles. It was developed by the IPC with the assistance of Guardent and PricewaterhouseCoopers. August 2001.

7. ***An Internet Privacy Primer: Assume Nothing*** is a collaborative paper by the Information and Privacy Commissioner/Ontario and Microsoft Canada. August 2001.

8. ***What Students Need to Know about Freedom of Information and Protection of Privacy***: The IPC has created resource material for Grade 11/12 teachers on freedom of information and protection of privacy. September 2001.

9. ***Guidelines for Using Video Surveillance Cameras in Public Places*** is a tool to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and, if so, how privacy protective measures can be built into the system. October 2001.

10. ***If you wanted to know... How to find what information the Provincial Government holds on you.*** Explains where to find and how to use the Directory of Records and Directory of Institutions. November 2001.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Upcoming presentations

The Commissioner and IPC staff members make presentations to more than 100 groups each year. Among the major presentations coming up in the near future are:

December 11. Commissioner Ann Cavoukian will make a presentation to the Ontario Bar Association on what should be included in an Ontario Privacy Act.

December 11. Assistant Commissioner Tom Mitchinson will lead a six-person IPC team to Kitchener-Waterloo for a series of presentations that include a luncheon speech by Mr. Mitchinson to the Kitchener-Waterloo Chamber of Commerce, a seminar for freedom of information co-ordinators from southwestern Ontario, and a public information meeting that evening at the main Kitchener library.

January 17. Commissioner Cavoukian will be addressing the 23rd World Congress on the Management of e-Commerce, at McMaster University in Hamilton.

March 20–21. Ken Anderson, the IPC's Director of Legal and Corporate Services, is making a special presentation at a Toronto conference for professionals in the medical and legal fields. He will review and update the new privacy imperatives for protecting health information in Ontario.

Mock cyber-crime trial explores serious privacy, jurisdictional issues

One day earlier this year, working from his computer in Boston, David Wilbur Moon hacked into an Ontario nuclear facility's server, defaced part of the Web site and copied confidential security information — which he later sold to Time magazine. The Ontario Provincial Police proceeded with an elaborate sting operation to lure Moon to Ontario, under the pretence of an invitation to speak at a conference.

This was the premise of a mock cyber-crime trial, *Privacy: The First Cyber-Crime Victim*, at the *Human Face of Privacy Technology* conference held at a University of Toronto facility in early November. This was the 2nd annual privacy and technology workshop sponsored by Ontario's Information and Privacy Commission and the Centre for Applied Cryptographic Research of the University of Waterloo. Mike Gurski, senior policy and technology adviser, IPC, was chairman of the conference.

More than 170 delegates attended the two-day conference, with the cyber-crime trial being one of the highlights. Justice Joseph Kenkel of the Ontario Court of Justice acted as the judge. Jennifer Granick, director of the Centre for Internet and Society, Stanford University, argued for the defendant (David Banisar, of the Kennedy School of Government, Harvard University). Scott Hutchinson, of the Ministry of the Attorney General, acted for the prosecution, and Detective Kelly Anderson, of the electronic crime team of the OPP, was called as an expert witness.

As one delegate noted, "you could hear a pin drop" in the filled-to-capacity conference room during the three-hour trial. The defence attorney brought forward a series of motions dealing with the seizure of evidence, the use of an informant, and the undercover sting operations of the OPP, as well as questioning the jurisdiction of the Ontario court to try a U.S. citizen.

Delegates had an opportunity to "approach the bench" with arguments and questions at key points in the trial.

The defendant was tried on three charges: fraudulent access of data; possession of property obtained by crime; and possession of proceeds of property obtained by crime.

The verdict: guilty on all three counts, according to the 170-person jury.

Dramatics aside, the mock cyber-crime trial illustrated the many legal and privacy issues involved in cyber-crime, including jurisdictional issues.

To access abstracts and presentations from the conference, visit: www.cacr.math.uwaterloo.ca/conferences.

Video
rveillance
Guidelines
Continued
om Page 1

Among the points made in the *Guidelines*:

- Institutions must be able to demonstrate that any proposed or existing collection of personal information by a video surveillance system is authorized under the *Acts*.
- A series of considerations are listed that institutions should address prior to proceeding with a video surveillance system.
- Once the decision to install cameras has been made, proper notice that an area is subject to surveillance is necessary.
- Also outlined are points that should be considered when:
  - developing a video surveillance system policy;
  - designing any such system; and
  - installing equipment.

Another section of the paper cites audits. "Institutions should ensure that the use and security of video surveillance equipment is subject to regular audits. The audit should also address the institution's compliance with the operational policies and procedures."

Guidelines for Using Video Surveillance Cameras in Public Places is available on the IPC's Web site: http://www.ipc.on.ca/english/pubpres/papers/summary.htm

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1881-I
Appeal PA-000286-1
Ministry of Health and Long-term Care

The Ministry of Health and Long-term Care received a correction request under section 47 of the *Freedom of Information and Protection of Privacy Act* from the appellant, a patient against whose OHIP file a doctor had fraudulently billed certain services. Some of these services had never been provided by the doctor, and the doctor had subsequently been convicted of fraud. The appellant asked the Ministry to correct his personal OHIP record by removing the incorrect information from the file.

The Ministry denied the request, maintaining that placing a statement of disagreement in the file, as authorized by section 47(2)(b) of the *Act*, was the appropriate remedy in the circumstances. The Ministry also said that the OHIP billing claims were not inaccurate, since they correctly reflected actual billed claims and payments, and that the record of these billings had to be retained for audit and other accounting purposes.

The appellant appealed the decision, and argued that specific account records that contain the incorrect information are available to a broad range of health providers, Ministry officials, other authorized agencies and third parties. He also argued that the existence of incorrect information about highly sensitive medical and psychiatric treatments in his file may directly affect him, and that, because of the nature of the incorrect information, attempts to deny its validity, including attaching statements of disagreement to the record, are not acceptable options.

In her order, the Commissioner accepted that the records were accurate from the perspective identified by the Ministry, but went on to find that there were other relevant purposes that required consideration. Because these records are used by Ministry staff and provided to insurance companies and others (with consent) as a health history record, these significant secondary uses presented serious privacy problems. When considered from these secondary contexts, the records were both inexact and incomplete, and qualified for correction under section 47(2).

The Commissioner agreed that attaching a "statement of disagreement" was inadequate, but also accepted that the records should not be destroyed. The remedy she imposed was for the inaccurate entries to be removed from the main database and placed into a newly created database that would only contain fraudulent and otherwise incorrectly billed records.

The order applied this remedy to the appellant's situation, and also extended it to other patients billed by this doctor for services not rendered. The order includes a postscript, in which the Ministry is encouraged to apply the theory outlined in the order more broadly to cover other doctors convicted of fraud, as well as other billings the Ministry determines are incorrect. The postscript also discusses the serious privacy implications of secondary uses of this nature.

Order MO-1472-F
Appeal MA-000274-1
Halton District School Board

The appellant, a parent of a student enrolled in a special education program operated by the Halton District School Board, requested access to a list of self-contained special needs classes for elementary schools, including the name of the school, the class designation and the exceptionalities in each class for specific school years.

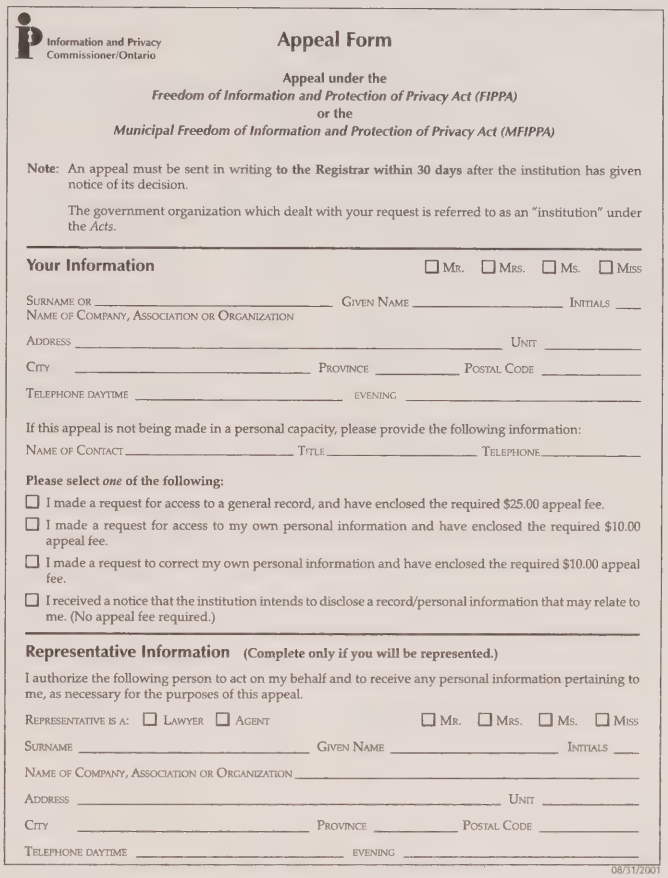
The board denied access to information relating to exceptionalities by school, class and numbers of students with specific exceptionalities per class, based on the exemption found at section 14(1)(f), with reference to the presumptions in sections 14(3)(a) and 14(3)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*, as disclosure of this information would reveal the identities of the students in these classes.

CONTINUED ON PAGE 7

New forms for filing an appeal or privacy complaint

The IPC's Tribunal Services Department has introduced two new special forms — the *appeal form* and the *privacy complaint form* — to help streamline the process of filing an appeal or a privacy complaint.

Completing the forms helps ensure that all necessary information is provided at the point of filing, and delays are avoided. Although there is a generic *request form*, for making an access request, there were no specific forms for filing an appeal or making a privacy complaint. Both of these new forms can be found on the IPC's Web site at http://www.ipc.on.ca/english/forms/forms.htm, along with clear instructions on how to complete these forms. Printed copies can also be obtained by request from the IPC office.



Information and Privacy Commissioner/Ontario

Appeal Form

Appeal under the
Freedom of Information and Protection of Privacy Act (FIPPA)
or the
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Note: An appeal must be sent in writing **to the Registrar within 30 days** after the institution has given notice of its decision.

The government organization which dealt with your request is referred to as an "institution" under the *Acts*.

Your Information ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname or Name of Company, Association or Organization _____ Given Name _____ Initials ___

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

If this appeal is not being made in a personal capacity, please provide the following information:

Name of Contact _____ Title _____ Telephone _____

Please select *one* of the following:

☐ I made a request for access to a general record, and have enclosed the required $25.00 appeal fee.

☐ I made a request for access to my own personal information and have enclosed the required $10.00 appeal fee.

☐ I made a request to correct my own personal information and have enclosed the required $10.00 appeal fee.

☐ I received a notice that the institution intends to disclose a record/personal information that may relate to me. (No appeal fee required.)

Representative Information **(Complete only if you will be represented.)**

I authorize the following person to act on my behalf and to receive any personal information pertaining to me, as necessary for the purposes of this appeal.

Representative is a: ☐ Lawyer ☐ Agent ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname _____ Given Name _____ Initials ___

Name of Company, Association or Organization _____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

08/31/2001

The new forms, each three pages long, are user-friendly and easy to complete. Colour is strategically used in the layout to simplify the filling-in process, and the graphics include small boxes that, when clicked on, will automatically produce a checkmark. Available both in English and French, they can be filled out online and then printed, or printed and then filled out with a pen. If more information needs to be included, extra pages can be attached. Either way, the completed forms can be sent to the IPC offices — along with the required documentation and, in the case of an appeal, the required fee. Because of privacy and security concerns, the completed form cannot be submitted online.

Using the new forms is optional — an appellant or complainant may choose to simply write a letter, which was the only option before the forms were created — but appellants and complainants are being encouraged by the IPC to use the new forms. They are thorough and comprehensive, and guide the appellant/complainant through each step.

Formerly, for example, an appellant might send a letter seeking an appeal but forget to include the institution's decision letter, or leave out other pertinent information, leading to a delay while the IPC sought the missing information.

"It is hoped the new forms will prove a more efficient, thorough and timely method of filing appeals and privacy complaints, and lead to a greater level of satisfaction for all users," said Robert Binstock, IPC registrar, who helped design the new forms.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Fee estimate: direct contact

The Ministry of Labour received a request from a member of the media for access to all reports, correspondence and records generated or received involving asbestos exposure in Hamilton-area hospitals.

In response, the Ministry issued an interim decision/fee estimate. In its decision letter, the Ministry explained that there was a minimum of 13,000 pages of responsive records. The Ministry offered two ways it might process the request and outlined the fee estimate for each option: Ministry staff could search for records referring to asbestos issues, with the fee estimated at $1,950; or, should the appellant want to conduct her own research, Ministry staff would copy all occupational health and safety records for her (subject to any exemptions that may apply), with the fee estimated at $2,600.

The appellant appealed on the basis that she was disputing the calculation of the fee.

During mediation, the Freedom of Information and Privacy Office of the Ministry offered to speak directly with the appellant to explain the fee calculation, as well as to explore ways to reduce the fee estimate. The appellant agreed with the Ministry's proposal. In the course of their discussions, the Ministry outlined to the appellant how it arrived at the calculation of fees for both of its estimates. The Ministry then provided the appellant with three additional options about how the request could be narrowed (one being to narrow the time frame), discussing the advantages and disadvantages of each option. The appellant accepted the Ministry's explanation regarding its calculations and also narrowed her request to a five-year time period. In turn, the Ministry provided two revised fee estimates of $465 and $620, based on the appellant's narrowed request.

In the end, the appellant was satisfied with the revised fee estimate and the appeal was resolved. In large part, this was due to the willingness of the Ministry's co-ordinator to speak directly with the appellant; to explain in detail the calculation of the fees, and to assist the appellant in narrowing the request -- while still ensuring the appellant obtained relevant records, but at a reduced fee.

Fee estimate: teleconference

The Ministry of Northern Development and Mines received a four-part request from a member of the media for access to all records relating to the Canadian Ecology Centre, including grants from the Northern Ontario Heritage Fund, evaluation reports, the most recent audit and funding application.

The Ministry advised the requester that there were 11,600 pages of responsive records and issued a fee estimate of $6,295. The estimated fee was subsequently revised to $4,415 for an estimated 6,700 pages. (There was no fee estimate for another approximate 1,000 pages, because exemptions applied, said the Ministry.) The requester appealed the revised fee estimate/ interim decision.

During mediation, the mediator contacted the Ministry's Freedom of Information co-ordinator to obtain details on the fee calculation. The co-ordinator suggested a teleconference with the mediator and the staff who had searched for the responsive records.

One regional office had estimated 30 hours of search and preparation time for reviewing records to determine whether third party exemptions might apply, and for time to extract duplicate copies. In discussions with the appellant, the mediator suggested that the fee could be reduced if he would agree to accept duplicate records and pay 20 cents per page for photocopies, instead of paying for search costs at $30 per hour. The appellant agreed.

The other regional office had estimated 72.5 hours preparation time for reviewing records to determine whether third-party exemptions might

CONTINUED ON PAGE 8

IPC releases Privacy Diagnostic Tool

Ontario businesses have been given a privacy tool that they can use to take their own "privacy pulse."

Developed by the IPC with the assistance of security and privacy experts at Guardent and PricewaterhouseCoopers, the *Privacy Diagnostic Tool (PDT)* compares an organization's business information processes against international privacy principles.

The *PDT* is not based on any one piece of legislation, nor is it geared towards any one industry. It is grounded in internationally recognized fair information practices. The *PDT* takes business leaders through sets of questions that will help them determine whether their business practices are protective of privacy or actually a threat to their customers' privacy.

The *PDT* outlines each of the 10 basic principles of fair information practices, explains their objectives and notes some of the risks organizations may face if they fail to adhere to the principles. Each principle has a series of questions, to which users answer "yes" or "no," based on their current business practices. The questions are divided into two categories and alert users to both the required steps and the best practices associated with each principle.

Once the questions are completed, the *PDT* produces a report outlining what steps need to be taken, based on the responses to the questions.

The IPC has received hundreds of requests from various provinces and from the United States for copies of the tool.

The guide is available online at http://www.ipc.on.ca/english/resources/resources.htm.

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ummaries

CONTINUED
ROM PAGE 4

The adjudicator found that special education identifications were not created to relate to a unique individual. Instead, each student who exhibits the characteristics of one or more of the pre-established categories is identified within the category. While the combination of categories of exceptionality used to identify one student is unique to that individual, a large number of students may all be placed in the same category and given the same special identification symbol.

After reviewing previous orders that have considered the definition of personal information, the adjudicator found that a special education identification is "a psychological label given to a student and is analogous to an identifying number, symbol or other particular assigned to an individual" within the meaning of section 2(1)(c) of the *Act*. She noted, however, that there must be a link between the individual student and the identification in order to bring this information within the definition.

The records contain information of a statistical nature. None of them contains the names of individuals or other information that would be recognized as "identifying." In considering whether the students are nevertheless identifiable, the adjudicator found that the level of knowledge an observer has of the classes, students and schools may be relevant in determining whether disclosure of the records would "reveal" personal information.

The adjudicator noted that one of the records identified each student within a particular class as having one or more special education identifications, that the class numbers are small and that some students would be readily identifiable through their exceptionality. She concluded that even someone with limited knowledge of a specific class would be able to identify particular students and found that "the ability to do that, even if for only a small number of students, brings this information within the definition of personal information...."

The adjudicator went on to find that this record qualified for exemption under section 14(1), as disclosure would be presumed to be an unjustified invasion of the students' personal privacy in that it would disclose information pertaining to the students' diagnosis, condition or evaluation (section 14(3)(a)). The adjudicator upheld the board's decision on this record and ordered the board to release the other two records.

CONTINUED FROM PAGE 6

apply. The mediator explained that, based on IPC orders, the Ministry cannot charge for reviewing records, but can charge for severing the exempt information at a cost of approximately two minutes per page. She also pointed out that the Ministry cannot charge for an employee's time to make photocopies. As a result, the Ministry issued a revised fee estimate of $2,600, based on a substantially reduced search and preparation time of 28 hours.

The appellant was satisfied with the revised fee estimate and the appeal was resolved. The willingness of Ministry staff, knowledgeable about the search, to participate in a teleconference with the mediator to discuss, in detail, the calculation of the estimated fee was an important step in resolving this appeal to the parties' satisfaction.

Sought aptitude test

The Toronto Police Service received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for the appellant's scores in three tests: the General Aptitude Test Battery, the Written Communication Test and the Physical Readiness Evaluation for Police Constable Test. The appellant participated in these tests as part of the police constable recruitment process.

The police service applied the provisions found in sections 52(3)1, 52(3)2 and 52(3)3 of the *Act* (that, under Bill 7 amendments, the *Act* does not apply to these employment-related records) to deny access to the requested information.

During the course of the appeal, the appellant informed the mediator that the appeal would be resolved if he received the results of his aptitude test. The mediator contacted the police's service's employment section and asked whether, considering that the test results are the appellant's own information, the test score could be disclosed outside of the *Act*. The employment section disclosed the test results to the appellant. The appeal was resolved accordingly.

Personnel records

The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of the appellant's personnel records. The city applied the provisions found in sections 52(3)1 and 52(3)3 of the *Act* to deny access to the records.

During mediation, the appellant narrowed the scope of the request to: a) his attendance records and b) his ranking in a number of job competitions. The city had originally applied section 52(3) of the *Act* on the basis that the appellant had filed a grievance against the city. The appellant informed the mediator that he is no longer in the employ of the city and that he has discontinued his grievance.

At the request of the mediator, the city contacted the union that had represented the appellant for the purpose of his grievance. The union confirmed that the grievance had been withdrawn. The city revised its access decision. The city withdrew its application of section 52(3) of the *Act* and granted the appellant full access to his attendance records and his ranking in one competition. The city also informed the appellant that records reflecting his ranking in the remaining competitions do not exist. The appellant was satisfied with the city's revised decision and the appeal was resolved.

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Mock cyber-crime trial explores serious privacy, jurisdictional issues

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As one delegate noted, "you could hear a pin drop" in the filled-to-capacity conference room during the three-hour trial. The defence attorney brought forward a series of motions dealing with the seizure of evidence, the use of an informant, and the undercover sting operations of the OPP, as well as questioning the jurisdiction of the Ontario court to try a U.S. citizen.

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Video
urveillance
Guidelines

CONTINUED
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The appellant, a parent of a student enrolled in a special education program operated by the Halton District School Board, requested access to a list of self-contained special needs classes for elementary schools, including the name of the school, the class designation and the exceptionalities in each class for specific school years.

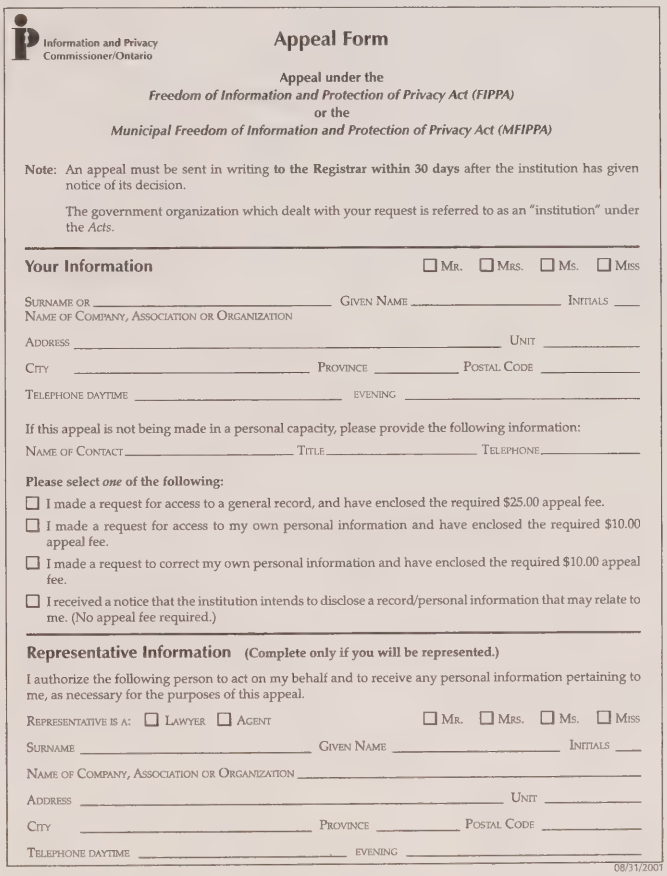
The board denied access to information relating to exceptionalities by school, class and numbers of students with specific exceptionalities per class, based on the exemption found at section 14(1)(f), with reference to the presumptions in sections 14(3)(a) and 14(3)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*, as disclosure of this information would reveal the identities of the students in these classes.

CONTINUED ON PAGE 7

New forms for filing an appeal or privacy complaint

The IPC's Tribunal Services Department has introduced two new special forms — the *appeal form* and the *privacy complaint form* — to help streamline the process of filing an appeal or a privacy complaint.

Completing the forms helps ensure that all necessary information is provided at the point of filing, and delays are avoided. Although there is a generic *request form*, for making an access request, there were no specific forms for filing an appeal or making a privacy complaint. Both of these new forms can be found on the IPC's Web site at http://www.ipc.on.ca/english/forms/forms.htm, along with clear instructions on how to complete these forms. Printed copies can also be obtained by request from the IPC office.



Information and Privacy Commissioner/Ontario

Appeal Form

Appeal under the
Freedom of Information and Protection of Privacy Act (FIPPA)
or the
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Note: An appeal must be sent in writing **to the Registrar within 30 days** after the institution has given notice of its decision.

The government organization which dealt with your request is referred to as an "institution" under the *Acts*.

Your Information ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname or Name of Company, Association or Organization _____ Given Name _____ Initials ___

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

If this appeal is not being made in a personal capacity, please provide the following information:

Name of Contact _____ Title _____ Telephone _____

Please select *one* of the following:

☐ I made a request for access to a general record, and have enclosed the required $25.00 appeal fee.

☐ I made a request for access to my own personal information and have enclosed the required $10.00 appeal fee.

☐ I made a request to correct my own personal information and have enclosed the required $10.00 appeal fee.

☐ I received a notice that the institution intends to disclose a record/personal information that may relate to me. (No appeal fee required.)

Representative Information **(Complete only if you will be represented.)**

I authorize the following person to act on my behalf and to receive any personal information pertaining to me, as necessary for the purposes of this appeal.

Representative is a: ☐ Lawyer ☐ Agent ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname _____ Given Name _____ Initials ___

Name of Company, Association or Organization _____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

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08/31/2001

The new forms, each three pages long, are user-friendly and easy to complete. Colour is strategically used in the layout to simplify the filling-in process, and the graphics include small boxes that, when clicked on, will automatically produce a checkmark. Available both in English and French, they can be filled out online and then printed, or printed and then filled out with a pen. If more information needs to be included, extra pages can be attached. Either way, the completed forms can be sent to the IPC offices — along with the required documentation and, in the case of an appeal, the required fee. Because of privacy and security concerns, the completed form cannot be submitted online.

Using the new forms is optional — an appellant or complainant may choose to simply write a letter, which was the only option before the forms were created — but appellants and complainants are being encouraged by the IPC to use the new forms. They are thorough and comprehensive, and guide the appellant/complainant through each step.

Formerly, for example, an appellant might send a letter seeking an appeal but forget to include the institution's decision letter, or leave out other pertinent information, leading to a delay while the IPC sought the missing information.

"It is hoped the new forms will prove a more efficient, thorough and timely method of filing appeals and privacy complaints, and lead to a greater level of satisfaction for all users," said Robert Binstock, IPC registrar, who helped design the new forms.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Fee estimate: direct contact

The Ministry of Labour received a request from a member of the media for access to all reports, correspondence and records generated or received involving asbestos exposure in Hamilton-area hospitals.

In response, the Ministry issued an interim decision/fee estimate. In its decision letter, the Ministry explained that there was a minimum of 13,000 pages of responsive records. The Ministry offered two ways it might process the request and outlined the fee estimate for each option: Ministry staff could search for records referring to asbestos issues, with the fee estimated at $1,950; or, should the appellant want to conduct her own research, Ministry staff would copy all occupational health and safety records for her (subject to any exemptions that may apply), with the fee estimated at $2,600.

The appellant appealed on the basis that she was disputing the calculation of the fee.

During mediation, the Freedom of Information and Privacy Office of the Ministry offered to speak directly with the appellant to explain the fee calculation, as well as to explore ways to reduce the fee estimate. The appellant agreed with the Ministry's proposal. In the course of their discussions, the Ministry outlined to the appellant how it arrived at the calculation of fees for both of its estimates. The Ministry then provided the appellant with three additional options about how the request could be narrowed (one being to narrow the time frame), discussing the advantages and disadvantages of each option. The appellant accepted the Ministry's explanation regarding its calculations and also narrowed her request to a five-year time period. In turn, the Ministry provided two revised fee estimates of $465 and $620, based on the appellant's narrowed request.

In the end, the appellant was satisfied with the revised fee estimate and the appeal was resolved. In large part, this was due to the willingness of the Ministry's co-ordinator to speak directly with the appellant; to explain in detail the calculation of the fees, and to assist the appellant in narrowing the request -- while still ensuring the appellant obtained relevant records, but at a reduced fee.

Fee estimate: teleconference

The Ministry of Northern Development and Mines received a four-part request from a member of the media for access to all records relating to the Canadian Ecology Centre, including grants from the Northern Ontario Heritage Fund, evaluation reports, the most recent audit and funding application.

The Ministry advised the requester that there were 11,600 pages of responsive records and issued a fee estimate of $6,295. The estimated fee was subsequently revised to $4,415 for an estimated 6,700 pages. (There was no fee estimate for another approximate 1,000 pages, because exemptions applied, said the Ministry.) The requester appealed the revised fee estimate/ interim decision.

During mediation, the mediator contacted the Ministry's Freedom of Information co-ordinator to obtain details on the fee calculation. The co-ordinator suggested a teleconference with the mediator and the staff who had searched for the responsive records.

One regional office had estimated 30 hours of search and preparation time for reviewing records to determine whether third party exemptions might apply, and for time to extract duplicate copies. In discussions with the appellant, the mediator suggested that the fee could be reduced if he would agree to accept duplicate records and pay 20 cents per page for photocopies, instead of paying for search costs at $30 per hour. The appellant agreed.

The other regional office had estimated 72.5 hours preparation time for reviewing records to determine whether third-party exemptions might

CONTINUED ON PAGE 8

IPC releases Privacy Diagnostic Tool

Ontario businesses have been given a privacy tool that they can use to take their own "privacy pulse."

Developed by the IPC with the assistance of security and privacy experts at Guardent and PricewaterhouseCoopers, the *Privacy Diagnostic Tool (PDT)* compares an organization's business information processes against international privacy principles.

The *PDT* is not based on any one piece of legislation, nor is it geared towards any one industry. It is grounded in internationally recognized fair information practices. The *PDT* takes business leaders through sets of questions that will help them determine whether their business practices are protective of privacy or actually a threat to their customers' privacy.

The *PDT* outlines each of the 10 basic principles of fair information practices, explains their objectives and notes some of the risks organizations may face if they fail to adhere to the principles. Each principle has a series of questions, to which users answer "yes" or "no," based on their current business practices. The questions are divided into two categories and alert users to both the required steps and the best practices associated with each principle.

Once the questions are completed, the *PDT* produces a report outlining what steps need to be taken, based on the responses to the questions.

The IPC has received hundreds of requests from various provinces and from the United States for copies of the tool.

The guide is available online at http://www.ipc.on.ca/english/resources/resources.htm.

Summaries

CONTINUED FROM PAGE 4

The adjudicator found that special education identifications were not created to relate to a unique individual. Instead, each student who exhibits the characteristics of one or more of the pre-established categories is identified within the category. While the combination of categories of exceptionality used to identify one student is unique to that individual, a large number of students may all be placed in the same category and given the same special identification symbol.

After reviewing previous orders that have considered the definition of personal information, the adjudicator found that a special education identification is "a psychological label given to a student and is analogous to an identifying number, symbol or other particular assigned to an individual" within the meaning of section 2(1)(c) of the *Act*. She noted, however, that there must be a link between the individual student and the identification in order to bring this information within the definition.

The records contain information of a statistical nature. None of them contains the names of individuals or other information that would be recognized as "identifying." In considering whether the students are nevertheless identifiable, the adjudicator found that the level of knowledge an observer has of the classes, students and schools may be relevant in determining whether disclosure of the records would "reveal" personal information.

The adjudicator noted that one of the records identified each student within a particular class as having one or more special education identifications, that the class numbers are small and that some students would be readily identifiable through their exceptionality. She concluded that even someone with limited knowledge of a specific class would be able to identify particular students and found that "the ability to do that, even if for only a small number of students, brings this information within the definition of personal information...."

The adjudicator went on to find that this record qualified for exemption under section 14(1), as disclosure would be presumed to be an unjustified invasion of the students' personal privacy in that it would disclose information pertaining to the students' diagnosis, condition or evaluation (section 14(3)(a)). The adjudicator upheld the board's decision on this record and ordered the board to release the other two records.

CONTINUED FROM PAGE 6

apply. The mediator explained that, based on IPC orders, the Ministry cannot charge for reviewing records, but can charge for severing the exempt information at a cost of approximately two minutes per page. She also pointed out that the Ministry cannot charge for an employee's time to make photocopies. As a result, the Ministry issued a revised fee estimate of $2,600, based on a substantially reduced search and preparation time of 28 hours.

The appellant was satisfied with the revised fee estimate and the appeal was resolved. The willingness of Ministry staff, knowledgeable about the search, to participate in a teleconference with the mediator to discuss, in detail, the calculation of the estimated fee was an important step in resolving this appeal to the parties' satisfaction.

Sought aptitude test

The Toronto Police Service received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for the appellant's scores in three tests: the General Aptitude Test Battery, the Written Communication Test and the Physical Readiness Evaluation for Police Constable Test. The appellant participated in these tests as part of the police constable recruitment process.

The police service applied the provisions found in sections 52(3)1, 52(3)2 and 52(3)3 of the *Act* (that, under Bill 7 amendments, the *Act* does not apply to these employment-related records) to deny access to the requested information.

During the course of the appeal, the appellant informed the mediator that the appeal would be resolved if he received the results of his aptitude test. The mediator contacted the police's service's employment section and asked whether, considering that the test results are the appellant's own information, the test score could be disclosed outside of the *Act*. The employment section disclosed the test results to the appellant. The appeal was resolved accordingly.

Personnel records

The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of the appellant's personnel records. The city applied the provisions found in sections 52(3)1 and 52(3)3 of the *Act* to deny access to the records.

During mediation, the appellant narrowed the scope of the request to: a) his attendance records and b) his ranking in a number of job competitions. The city had originally applied section 52(3) of the *Act* on the basis that the appellant had filed a grievance against the city. The appellant informed the mediator that he is no longer in the employ of the city and that he has discontinued his grievance.

At the request of the mediator, the city contacted the union that had represented the appellant for the purpose of his grievance. The union confirmed that the grievance had been withdrawn. The city revised its access decision. The city withdrew its application of section 52(3) of the *Act* and granted the appellant full access to his attendance records and his ranking in one competition. The city also informed the appellant that records reflecting his ranking in the remaining competitions do not exist. The appellant was satisfied with the city's revised decision and the appeal was resolved.

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If you have any comments regarding this newsletter, wish to advise of a change of address, or be added to the mailing list, contact:

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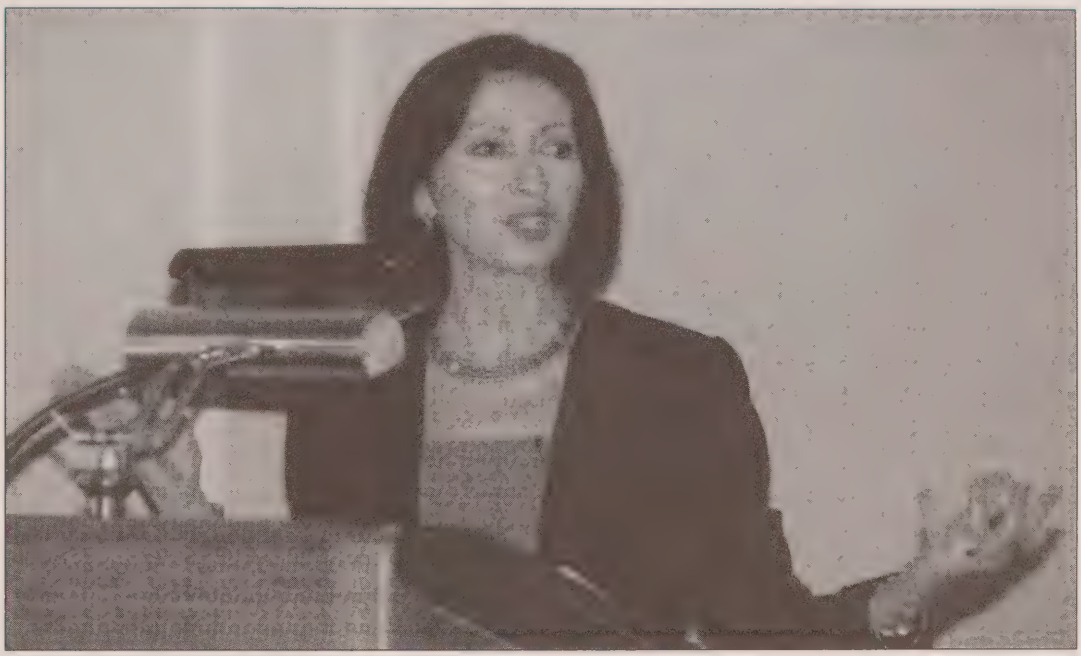

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Guidelines for using video surveillance cameras

Institutions governed by the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* that are considering implementing a video surveillance program must balance the benefits of video surveillance to the public against an individual's right to be free of unwarranted intrusion into his or her life.

"Pervasive, routine and random surveillance of ordinary, lawful public activities interferes with an individual's privacy," said Ontario Information and Privacy Commissioner Ann Cavoukian.

Guidelines for Using Video Surveillance Cameras in Public Places, a special publication recently released by the Commissioner, was created to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and, if so, how privacy protective measures can be built into the system.

CONTINUED ON PAGE 3

this Issue:

Recent IPC publications

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1. ***Second Presentation to the Standing Committee on General Government: Bill 159:*** *Personal Health Information Privacy Act, 2000.* March 2001.

2. ***A submission in response to the federal Access to Information Review Task Force's consultation paper.*** May 2001.

3. *2000 Annual Report.* June 2001.

4. ***Best Practices for Online Privacy Protection.*** June 2001.

5. ***Guidelines for Protecting the Privacy and Confidentiality of Personal Information When Working Outside the Office.*** July 2001.

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Halton District School Board

The appellant, a parent of a student enrolled in a special education program operated by the Halton District School Board, requested access to a list of self-contained special needs classes for elementary schools, including the name of the school, the class designation and the exceptionalities in each class for specific school years.

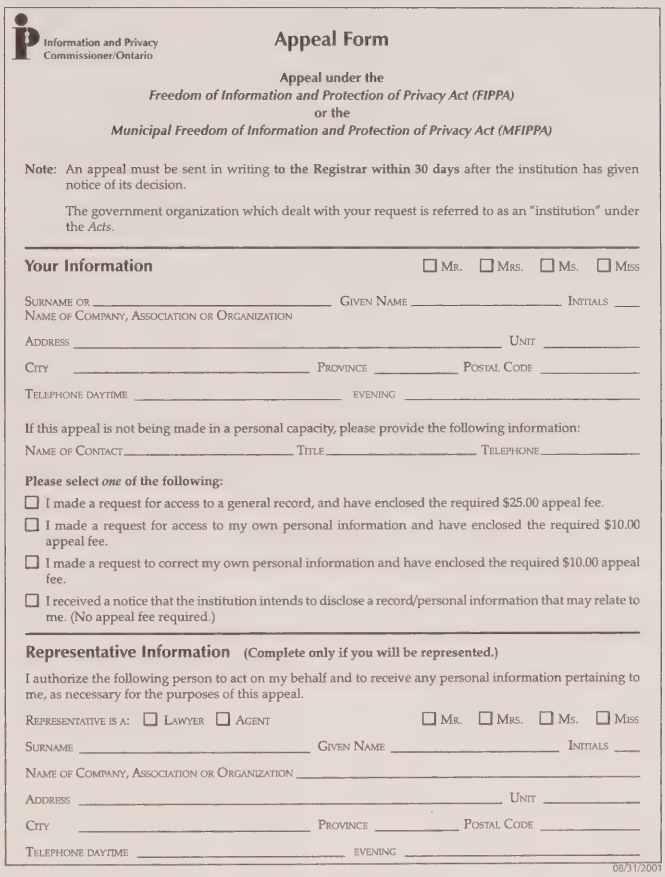
The board denied access to information relating to exceptionalities by school, class and numbers of students with specific exceptionalities per class, based on the exemption found at section 14(1)(f), with reference to the presumptions in sections 14(3)(a) and 14(3)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*, as disclosure of this information would reveal the identities of the students in these classes.

Continued on Page 7

New forms for filing an appeal or privacy complaint

The IPC's Tribunal Services Department has introduced two new special forms — the *appeal form* and the *privacy complaint form* — to help streamline the process of filing an appeal or a privacy complaint.

Completing the forms helps ensure that all necessary information is provided at the point of filing, and delays are avoided. Although there is a generic *request form*, for making an access request, there were no specific forms for filing an appeal or making a privacy complaint. Both of these new forms can be found on the IPC's Web site at http://www.ipc.on.ca/english/forms/forms.htm, along with clear instructions on how to complete these forms. Printed copies can also be obtained by request from the IPC office.



Information and Privacy Commissioner/Ontario

Appeal Form

Appeal under the
Freedom of Information and Protection of Privacy Act (FIPPA)
or the
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Note: An appeal must be sent in writing **to the Registrar within 30 days** after the institution has given notice of its decision.

The government organization which dealt with your request is referred to as an "institution" under the *Acts*.

Your Information ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname or Name of Company, Association or Organization _____ Given Name _____ Initials ___

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

If this appeal is not being made in a personal capacity, please provide the following information:

Name of Contact _____ Title _____ Telephone _____

Please select *one* of the following:

☐ I made a request for access to a general record, and have enclosed the required $25.00 appeal fee.

☐ I made a request for access to my own personal information and have enclosed the required $10.00 appeal fee.

☐ I made a request to correct my own personal information and have enclosed the required $10.00 appeal fee.

☐ I received a notice that the institution intends to disclose a record/personal information that may relate to me. (No appeal fee required.)

Representative Information **(Complete only if you will be represented.)**

I authorize the following person to act on my behalf and to receive any personal information pertaining to me, as necessary for the purposes of this appeal.

Representative is a: ☐ Lawyer ☐ Agent ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname _____ Given Name _____ Initials ___

Name of Company, Association or Organization _____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

08/31/2001

The new forms, each three pages long, are user-friendly and easy to complete. Colour is strategically used in the layout to simplify the filling-in process, and the graphics include small boxes that, when clicked on, will automatically produce a checkmark. Available both in English and French, they can be filled out online and then printed, or printed and then filled out with a pen. If more information needs to be included, extra pages can be attached. Either way, the completed forms can be sent to the IPC offices — along with the required documentation and, in the case of an appeal, the required fee. Because of privacy and security concerns, the completed form cannot be submitted online.

Using the new forms is optional — an appellant or complainant may choose to simply write a letter, which was the only option before the forms were created — but appellants and complainants are being encouraged by the IPC to use the new forms. They are thorough and comprehensive, and guide the appellant/complainant through each step.

Formerly, for example, an appellant might send a letter seeking an appeal but forget to include the institution's decision letter, or leave out other pertinent information, leading to a delay while the IPC sought the missing information.

"It is hoped the new forms will prove a more efficient, thorough and timely method of filing appeals and privacy complaints, and lead to a greater level of satisfaction for all users," said Robert Binstock, IPC registrar, who helped design the new forms.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Fee estimate: direct contact

The Ministry of Labour received a request from a member of the media for access to all reports, correspondence and records generated or received involving asbestos exposure in Hamilton-area hospitals.

In response, the Ministry issued an interim decision/fee estimate. In its decision letter, the Ministry explained that there was a minimum of 13,000 pages of responsive records. The Ministry offered two ways it might process the request and outlined the fee estimate for each option: Ministry staff could search for records referring to asbestos issues, with the fee estimated at $1,950; or, should the appellant want to conduct her own research, Ministry staff would copy all occupational health and safety records for her (subject to any exemptions that may apply), with the fee estimated at $2,600.

The appellant appealed on the basis that she was disputing the calculation of the fee.

During mediation, the Freedom of Information and Privacy Office of the Ministry offered to speak directly with the appellant to explain the fee calculation, as well as to explore ways to reduce the fee estimate. The appellant agreed with the Ministry's proposal. In the course of their discussions, the Ministry outlined to the appellant how it arrived at the calculation of fees for both of its estimates. The Ministry then provided the appellant with three additional options about how the request could be narrowed (one being to narrow the time frame), discussing the advantages and disadvantages of each option. The appellant accepted the Ministry's explanation regarding its calculations and also narrowed her request to a five-year time period. In turn, the Ministry provided two revised fee estimates of $465 and $620, based on the appellant's narrowed request.

In the end, the appellant was satisfied with the revised fee estimate and the appeal was resolved. In large part, this was due to the willingness of the Ministry's co-ordinator to speak directly with the appellant; to explain in detail the calculation of the fees, and to assist the appellant in narrowing the request -- while still ensuring the appellant obtained relevant records, but at a reduced fee.

Fee estimate: teleconference

The Ministry of Northern Development and Mines received a four-part request from a member of the media for access to all records relating to the Canadian Ecology Centre, including grants from the Northern Ontario Heritage Fund, evaluation reports, the most recent audit and funding application.

The Ministry advised the requester that there were 11,600 pages of responsive records and issued a fee estimate of $6,295. The estimated fee was subsequently revised to $4,415 for an estimated 6,700 pages. (There was no fee estimate for another approximate 1,000 pages, because exemptions applied, said the Ministry.) The requester appealed the revised fee estimate/ interim decision.

During mediation, the mediator contacted the Ministry's Freedom of Information co-ordinator to obtain details on the fee calculation. The co-ordinator suggested a teleconference with the mediator and the staff who had searched for the responsive records.

One regional office had estimated 30 hours of search and preparation time for reviewing records to determine whether third party exemptions might apply, and for time to extract duplicate copies. In discussions with the appellant, the mediator suggested that the fee could be reduced if he would agree to accept duplicate records and pay 20 cents per page for photocopies, instead of paying for search costs at $30 per hour. The appellant agreed.

The other regional office had estimated 72.5 hours preparation time for reviewing records to determine whether third-party exemptions might

CONTINUED ON PAGE 8

IPC releases Privacy Diagnostic Tool

Ontario businesses have been given a privacy tool that they can use to take their own "privacy pulse."

Developed by the IPC with the assistance of security and privacy experts at Guardent and PricewaterhouseCoopers, the *Privacy Diagnostic Tool (PDT)* compares an organization's business information processes against international privacy principles.

The *PDT* is not based on any one piece of legislation, nor is it geared towards any one industry. It is grounded in internationally recognized fair information practices. The *PDT* takes business leaders through sets of questions that will help them determine whether their business practices are protective of privacy or actually a threat to their customers' privacy.

The *PDT* outlines each of the 10 basic principles of fair information practices, explains their objectives and notes some of the risks organizations may face if they fail to adhere to the principles. Each principle has a series of questions, to which users answer "yes" or "no," based on their current business practices. The questions are divided into two categories and alert users to both the required steps and the best practices associated with each principle.

Once the questions are completed, the *PDT* produces a report outlining what steps need to be taken, based on the responses to the questions.

The IPC has received hundreds of requests from various provinces and from the United States for copies of the tool.

The guide is available online at http://www.ipc.on.ca/english/resources/resources.htm.

Summaries

CONTINUED FROM PAGE 4

The adjudicator found that special education identifications were not created to relate to a unique individual. Instead, each student who exhibits the characteristics of one or more of the pre-established categories is identified within the category. While the combination of categories of exceptionality used to identify one student is unique to that individual, a large number of students may all be placed in the same category and given the same special identification symbol.

After reviewing previous orders that have considered the definition of personal information, the adjudicator found that a special education identification is "a psychological label given to a student and is analogous to an identifying number, symbol or other particular assigned to an individual" within the meaning of section 2(1)(c) of the *Act*. She noted, however, that there must be a link between the individual student and the identification in order to bring this information within the definition.

The records contain information of a statistical nature. None of them contains the names of individuals or other information that would be recognized as "identifying." In considering whether the students are nevertheless identifiable, the adjudicator found that the level of knowledge an observer has of the classes, students and schools may be relevant in determining whether disclosure of the records would "reveal" personal information.

The adjudicator noted that one of the records identified each student within a particular class as having one or more special education identifications, that the class numbers are small and that some students would be readily identifiable through their exceptionality. She concluded that even someone with limited knowledge of a specific class would be able to identify particular students and found that "the ability to do that, even if for only a small number of students, brings this information within the definition of personal information...."

The adjudicator went on to find that this record qualified for exemption under section 14(1), as disclosure would be presumed to be an unjustified invasion of the students' personal privacy in that it would disclose information pertaining to the students' diagnosis, condition or evaluation (section 14(3)(a)). The adjudicator upheld the board's decision on this record and ordered the board to release the other two records.

CONTINUED
FROM PAGE 6

apply. The mediator explained that, based on IPC orders, the Ministry cannot charge for reviewing records, but can charge for severing the exempt information at a cost of approximately two minutes per page. She also pointed out that the Ministry cannot charge for an employee's time to make photocopies. As a result, the Ministry issued a revised fee estimate of $2,600, based on a substantially reduced search and preparation time of 28 hours.

The appellant was satisfied with the revised fee estimate and the appeal was resolved. The willingness of Ministry staff, knowledgeable about the search, to participate in a teleconference with the mediator to discuss, in detail, the calculation of the estimated fee was an important step in resolving this appeal to the parties' satisfaction.

Sought aptitude test

The Toronto Police Service received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for the appellant's scores in three tests: the General Aptitude Test Battery, the Written Communication Test and the Physical Readiness Evaluation for Police Constable Test. The appellant participated in these tests as part of the police constable recruitment process.

The police service applied the provisions found in sections 52(3)1, 52(3)2 and 52(3)3 of the *Act* (that, under Bill 7 amendments, the *Act* does not apply to these employment-related records) to deny access to the requested information.

During the course of the appeal, the appellant informed the mediator that the appeal would be resolved if he received the results of his aptitude test. The mediator contacted the police's service's employment section and asked whether, considering that the test results are the appellant's own information, the test score could be disclosed outside of the *Act*. The employment section disclosed the test results to the appellant. The appeal was resolved accordingly.

Personnel records

The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of the appellant's personnel records. The city applied the provisions found in sections 52(3)1 and 52(3)3 of the *Act* to deny access to the records.

During mediation, the appellant narrowed the scope of the request to: a) his attendance records and b) his ranking in a number of job competitions. The city had originally applied section 52(3) of the *Act* on the basis that the appellant had filed a grievance against the city. The appellant informed the mediator that he is no longer in the employ of the city and that he has discontinued his grievance.

At the request of the mediator, the city contacted the union that had represented the appellant for the purpose of his grievance. The union confirmed that the grievance had been withdrawn. The city revised its access decision. The city withdrew its application of section 52(3) of the *Act* and granted the appellant full access to his attendance records and his ranking in one competition. The city also informed the appellant that records reflecting his ranking in the remaining competitions do not exist. The appellant was satisfied with the city's revised decision and the appeal was resolved.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian; Ken Anderson, the IPC's Director of Legal and Corporate Services (right), and John Swaigen, of the IPC's legal department, discuss the IPC's outreach program to Ontario legal clinics. See story on page 3.

Draft privacy legislation welcomed; Commissioner proposes improvements

Ontario Information and Privacy Commissioner Ann Cavoukian is pleased with the extensive scope of the province's recently released draft privacy legislation — the *Privacy of Personal Information Act, 2002* — but has made a number of specific recommendations for improvements.

The Commissioner has sent a letter and a detailed submission to Norman Sterling, Minister of Consumer and Business Services. The Commissioner commended the Minister for releasing a consultation draft for public comment prior to its introduction in the Legislature.

The Commissioner said that she was "particularly pleased with the broad scope of the proposed legislation.... The combining of general rules with health-specific rules for privacy protection does indeed make for a complex piece of legislation. Nonetheless, I strongly support the government in its desire to create a single comprehensive piece of privacy legislation. It is essential that both the health

CONTINUED ON PAGE 5

this Issue:

Recent IPC publications

The IPC has issued (in order of publication) the following publications and submissions since the last edition of *Perspectives*:

1. ***Working with the* Municipal Freedom of Information and Protection of Privacy Act*: A Councillor's Guide*** provides a brief description of the City of Ottawa's corporate program for access to information and protection of privacy, and focuses particularly on how the *Act* applies to both records requested by, and in the possession of, elected members of Council. November 2001.

2. ***Backgrounder for Senior Managers and Privacy Co-ordinators: Raising the profile of Access and Privacy in your institution.*** Each provincial and municipal government organization has a Co-ordinator. This Backgrounder, produced by the IPC and the Ministry of Natural Resources, looks at ways Co-ordinators can help staff integrate an awareness and understanding of access and privacy into their daily work. December 2001.

3. ***Exercising Discretion under section 38(b) of the* Municipal Freedom of Information and Protection of Privacy Act** provides institutions with an outline of what constitutes a valid exercise of discretion in the application of section 38(b), and some practical tips on how to properly exercise discretion when dealing with a specific category of records. Produced by the Toronto Police Service and the Information and Privacy Commissioner/ Ontario. January 2002.

4. ***If you wanted to know... What are the 15 most frequently asked questions the Information and Privacy Commissioner receives?*** This is the latest release in the IPC's *If you wanted to know...* series. February 2002.

5. ***Submission to the Ministry of Consumer and Business Services: Consultation Draft of the Privacy of Personal Information Act, 2002.*** February 2002.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Windsor and Area Educational Initiative

The next IPC outreach project under our *Reaching out to Ontario* program is the *Windsor and Area Educational Initiative*, May 16 and 17.

A number of presentations were still being finalized when this edition *of IPC Perspectives* went to press, but this initiative will include:

- a seminar for Freedom of Information Co-ordinators from the western portion of southwestern Ontario, at 2 p.m., May 16;
- meetings with education consultants from area school boards re: the IPC's teachers' guides for elementary and secondary school teachers;
- a public information meeting at the Windsor Public Library, 7 p.m., May 16;
- a presentation by Assistant Commissioner Tom Mitchinson to the Windsor Chamber of Commerce at a breakfast meeting May 17;
- presentations to several Grade 5 classes;
- and a number of other meetings for which arrangements are still being made.

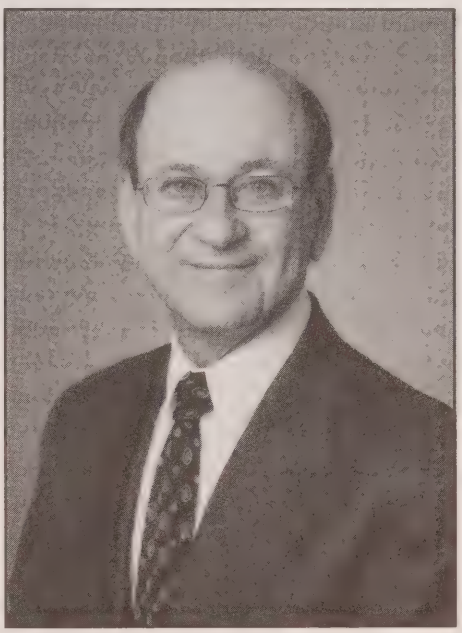
The first *Reaching out to Ontario* initiative of 2002 was the *Central Ontario Educational Initiative* in the Barrie area March 26.

Two more initiatives are tentatively planned for this fall (Sault Ste. Marie and Mississauga).

Legal clinics helping IPC tell the public about its rights

The Information and Privacy Commission has a multi-faceted outreach program aimed at helping to educate Ontarians about their access and privacy rights. As well as a variety of broadly based programs, the IPC reaches out to specific organizations that frequently deal with the public. Groups as diverse as librarians, the media and legal clinics are offered speakers and educational material.

Among the local organizations contacted when the IPC is planning an educational initiative under its *Reaching out to Ontario* program are legal clinics. Since this aspect of program was launched two years ago, legal counsel from the IPC have made presentations to community legal clinics in Barrie, Belleville, Halton Region, Hamilton, Kingston, Kitchener, Sudbury and Thunder Bay. Presentations are planned at clinics in three more cities this year.



John Swaigen of the IPC's legal department.

Community legal clinics were first established in Ontario in the early 1970s to help low-income and disadvantaged people to assert their legal rights to obtain the fundamental entitlements of life — food and shelter. Clinic lawyers and community legal workers represent and provide advice to people with problems related to landlord-tenant disputes, workers' compensation, employment insurance, social assistance, refugee and immigration law, and human rights.

John Swaigen, a member of the IPC's legal department — and a former clinic lawyer and former director of quality assurance for the clinic system — makes most of the IPC presentations at clinics.

"These presentations and question and answer sessions serve two purposes," said Swaigen. "They inform the clinics about specific access and privacy issues, such as mandatory drug testing and treatment for social assistance applicants, and they raise public awareness of the IPC and its objectives."

The presentations include a review of key provisions of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, privacy principles, how the access process works, and citizens' rights of appeal.

The IPC speakers often get a wide range of questions, as many of the issues that a legal clinic is involved in deal with the collection by a government organization of personal information, or efforts to access information held by a government organization.

Often, individuals are not sure what their rights are. Legal clinics instruct their clients about what types of information gathering go beyond fair information practices. On behalf of a client, clinic staff may seek a copy of the information a government agency is relying on to deny benefits and may challenge its accuracy.

Requests from legal clinics for IPC publications have increased since this outreach program was launched.

"The IPC has had an excellent response to sessions at legal clinics," said Swaigen. "The clinics are helping to raise the public's awareness of privacy and access rights."

Mediation teams restructured

Although it's business as usual for appellants, complainants and institutions, there has been a seamless behind-the-scenes change to the structure of the IPC's Tribunal Services Department's mediation teams.

Formerly, there were two managers of mediation, one for the provincial mediation team, the other for the municipal team. Now we have one mediation manager in charge of the full mediation program, supported by two team leaders.

Irena Pascoe is the provincial mediation team leader, while the municipal team is led by Mona Wong. Each team leader oversees a team of six mediators, including part-time staff, and both team leaders report to Diane Frank, the manager of mediation.

Upcoming presentations

The Commissioner and IPC staff members make presentations to more than 100 groups each year. Among the major presentations coming up in the near future are:

April 17. Commissioner **Ann Cavoukian** is speaking on a panel of distinguished experts discussing the privacy implications of anti-terrorism legislation at the 12th annual *Conference on Computers, Freedom and Privacy* in San Francisco.

May 10. Commissioner **Ann Cavoukian** joins Assistant Commissioner **Tom Mitchinson**, General Counsel **William Challis** and Manager of Adjudication **David Goodis** at *Open Government: Freedom of Information Law In Ontario* — an Ontario Bar Association continuing legal education conference, organized by the IPC and the Ministry of the Attorney General.

May 16. A team from the IPC is holding a public information meeting at the Windsor Public Library at 7 p.m., one of a series of presentations being conducted as part of the two-day *Windsor and Area Educational Initiative*, part of the IPC's *Reaching out to Ontario* program.

May 17. Assistant Commissioner **Tom Mitchinson** is making a special presentation to the Windsor Chamber of Commerce at a breakfast meeting, another of the key sessions during the *Windsor and Area Educational Initiative*. The presentation will focus on how businesses can respond to the critical issue of privacy.

May 29. **Ken Anderson**, the IPC's Director of Legal and Corporate Services, will address a legal and IT audience on the topic of Internet privacy at the Internet Law Conference in Toronto. He will review Ontario's proposed *Privacy of Personal Information Act, 2002*, and discuss privacy in the post 9-11 era.

June 5. Commissioner **Ann Cavoukian** is a special guest speaker at a conference — organized by the Centre for Innovation — at the Faculty of Law at the University of Toronto. She will discuss the proposed privacy legislation and how she sees it moving forward.

June 17. Commissioner **Ann Cavoukian** is a keynote speaker at the Canadian Institute Forum on Health Care Privacy in Toronto. Her presentation will focus on the personal and public interest imperatives in Ontario's proposed privacy legislation. **Brian Beamish**, the IPC's Director of Policy and Compliance, is participating on a panel addressing personal health information.

July 11. **Ken Anderson**, Director of Legal and Corporate Services, will speak at a Canadian Institute session in Toronto on the fundamentals of pension governance. His presentation is entitled, *Complying with New Privacy Laws*.

Draft privacy legislation

CONTINUED FROM PAGE 1

sector and the broader private sector are covered by privacy legislation."

The foundation of the draft privacy legislation is the 10 principles of the Canadian Standards Association's *Model Code for the Protection of Personal Information* — which is also the basis of the federal private sector legislation.

While noting in her letter to Minister Sterling that she was "supportive of the overall objective," the Commissioner stressed that the draft legislation needed "to be improved and strengthened in a number of critical areas in order to strike the right balance between protecting individual privacy rights and the reasonable needs of organizations in Ontario."

Commissioner Ann Cavoukian, Brian Beamish, the IPC's Director of Policy and Compliance (centre), and Greg Keeling, Director of Strategic Planning and the Commissioner's acting Executive Assistant, discuss the IPC's submission re: the proposed *Privacy of Personal Information Act, 2002.*

The majority of the Commissioner's concerns fall under four overall themes. These are:

- **Drafting Issues:** The legislation is overly complex because of problems with the drafting — difficult and ambiguous language, inconsistencies, redundancies and duplication. The most critical issue to be clarified is the application of express and implied consent.

- **Enhancing Consent:** The privacy protections afforded by the legislation are based upon individuals being able to knowledgeably give or withhold their consent regarding matters associated with their personal information. "While recognizing that certain situations may necessitate the collection, use or disclosure of personal information without the individual's consent, I'm concerned that the exemptions to consent in the draft legislation are too broad," the Commissioner said in her letter to the Minister. "In our submission, we have highlighted those exemptions which we think are unreasonable and, therefore, should be removed or narrowed. We have also indicated where notice should be required, for those circumstances when consent is not appropriate or possible. This enables the individual to make informed decisions and to take action, if necessary."

- **Strengthening Oversight:** While generally supportive of the scope of the powers provided for in the draft legislation, the Commissioner is concerned by the fact that her office would be unable to require an individual to give testimony. When an oversight body does not have cler authority to compel testimony as part of the evidence-gathering process, it cannot adequately assess the extent to which organizations are complying with their responsibilities. In turn, the public cannot be confident that organizations are being held accountable for their information-management practices.

- **Reducing the Scope of the Regulations:** The Commissioner's submission stresses that the regulation provisions in the draft legislation are too broad. A number of these provisions could result in an erosion of the fundamental rights and responsibilities set out in the draft legislation, and she has recommended they be eliminated. As well, she suggests provisions be added to ensure the regulation-making process is more transparent and accountable.

"The consultation draft of the *Privacy of Personal Information Act, 2002* is an important step forward toward enacting privacy legislation for the broader private and health sectors," said the Commissioner. "I look forward to continued discussions between the IPC and Minister Sterling's offices as the legislation proceeds."

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Seeking consent

The Ministry of the Solicitor General received a request from a member of the media for answers to five questions regarding a competition for appointment to a particular police services board. The Ministry provided answers to four of the questions but denied access to records responsive to where the unsuccessful applicants resided, on the basis that this would be an unjustified invasion of their privacy.

The Ministry's decision was appealed. During mediation, the mediator explored the interests and issues of both parties. The appellant advised that a broad range of communities were not represented on the board and his interest was to see if applicants had in fact applied from a variety of communities. The Ministry's concern was that several applicants lived in communities so small that releasing names of their communities could serve to identify them, even in the absence of their names.

With the agreement of the parties, the mediator contacted the unsuccessful applicants and sought their consent to release the names of the communities they resided in. While recognizing that it was still possible to be identified by the release of the name of their community, two of the three applicants consented to the release. The appellant was satisfied to receive the two community names and decided not to pursue the appeal further.

Providing a detailed explanation

The Toronto Police Service received a request for a copy of a 911-call report about the requester. The call had been made from a doughnut store where the requester had been a customer.

The police located five reports and provided the requester with partial access. Certain information was severed under section 14 (personal information). The decision letter also noted that the police were unable to confirm that the requester is the subject of the reports.

The requester (now the appellant) appealed on the basis that records relating to him should exist. He stated that store staff had told him they had called 911, and later a police officer instructed him to leave the store.

The mediator contacted staff in the Police Services' Freedom of Information and Privacy office and was provided with the following explanation. After an initial search using the appellant's name did not produce any records, staff then searched all records relating to 911 calls for a four-month period. They removed from this subgroup all records in which the subject of the call was named, or identified as a woman, or identified as a group. Five 911 reports remained in which the subject of the call from the store in question was an unnamed male. Those records were disclosed (with minor severances) to the appellant in the event that he might be able to identify himself in one of those records.

Once the mediator provided this explanation to the appellant, he was satisfied and considered his appeal resolved.

Interest-based mediation

An appellant filed six appeals resulting from related requests he had made to the Ministry of Natural Resources. Although each request was distinct in nature, all related to the same issue — the sale of cottage lots.

The Ministry's decisions varied from case to case: it either granted partial access, denied access in full on the basis that the information was publicly available, or claimed that no records exist. From reviewing the parties' correspondence, it was evident that there was an ongoing relationship between them over this issue. Not only had the requester (now the appellant) filed access requests, but he had also been corresponding directly with the Ministry's program area staff.

During mediation, the mediator discussed all of the files collectively with the parties, in hopes

Continued on Page 7

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1886
Appeals PA-000183-1 and PA-000181-1
Ministry of Consumer and Business Services

The Ministry of Consumer and Business Services received a request for access to the names and country of birth of the parents of two individuals who themselves had been dead for more than 30 years. The requester represents a company that traces heirs and provides genealogical research services for individuals and families.

The Ministry denied the request on the basis that disclosure would constitute an unjustified invasion of the privacy of the individuals who are identified in the records. In doing so, it relied on section 2(2), which states that "personal information does not include information about an individual who has been dead for more than 30 years." The Ministry calculated that the individuals could have lived to approximately 95 years of age, and then added the 30 years referred to in section 2(2) to come up with the appropriate date to be applied in the circumstances.

The requester (now the appellant) appealed the decision. He argued that, assuming that life expectancy at the turn of the century was approximately 71 years, the "parents of the deceased have in all probability been deceased from more than 30 years."

Assistant Commissioner Tom Mitchinson reviewed the issue of the estimated life expectancy. He accepted that life expectancy has increased over time, and found that applying current life expectancy assumptions to those

CONTINUED ON PAGE 8

Mediation success stories

CONTINUED FROM PAGE 6

of getting to their underlying interests. The appellant explained what he was trying to determine by the filing of requests and the Ministry explained why it believed it had already addressed his concerns.

Through this interest-based mediation approach, the appellant received the additional explanations he felt met his real needs. The appellant was satisfied with the Ministry's explanations and all six appeals were resolved on that basis.

Mediation was successful in large part due to the co-operation and willingness of the Ministry to agree to take the time and effort necessary to provide the appellant with explanations, rather than focusing on the Ministry's exemption claims.

Alternate access

The Ottawa Police Service received a request for the names of two individuals who were involved in an altercation outside of a bar that resulted in damage to the requester's car. The requester wanted this information in order to take the matter to Small Claims Court to recover the costs of car repairs.

The police identified the general occurrence report as the record responsive to the request. The police granted partial access to the record and denied access to the remainder, including the identities of the individuals who damaged the requester's car.

The decision was appealed. The appellant explained that at the time of the incident, the police told her that the individuals had been charged. She was advised to wait to see whether or not the court would award her damages. The appellant advised the IPC that one of the individuals was convicted, but the appellant was not awarded damages.

The mediator discussed the purposes of the *Act* and the possibility of seeking the individuals' consent to disclose their information. The appellant acknowledged that it was doubtful that they would consent. The mediator advised the appellant that court records are available to the public. The appellant checked the court files for the relevant time period and satisfied herself that she had obtained the information she needed from this alternate method of access. She decided not to pursue her appeal.

born in the 1800s was not reasonable. He concluded that the appropriate approach was to determine the estimated life expectancy of individuals born at approximately the same time as the parents.

Using Statistics Canada data, he applied a conservative assumption to the particular situation. Under this projected life expectancy, the parents of one individual would have died around 1957 and the parents of the other individual around 1961. The Assistant Commissioner concluded that it was reasonable that the parents identified by the appellant have been dead for at least 30 years. The information was ordered released.

As a postscript to this order, the Assistant Commissioner stated that knowledge of the actual date of death is the best method of determining the application of section 2(2), and that, in future similar situations, any steps taken by the Ministry to determine the actual date would be welcome.

ORDER MO-1494
Appeal MA-000374-1
Regional Municipality of Peel

The Regional Municipality of Peel received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records relating to a joint project that also involved the Town of Caledon. This involved a resource study concerning an amendment to the town's official plan, which was scheduled to be the subject of an Ontario Municipal Board hearing. The requester represented a party involved in that hearing.

The region initially responded by allowing the requester to review the records at the region's offices to determine which ones he wanted photocopied. Following this review by the requester, the region claimed that certain records qualified for exemption under the *Act*, and that others had subsequently been transferred to the town for a decision on access.

That decision was appealed to the IPC.

The adjudicator had to decide whether the *Act* permitted the region to provide a "quick peek" to the requester, and then refuse disclosure on the basis of discretionary exemptions. The region argued that, although it had allowed the requester to review the records, it had never intended to waive any possible exemption, including solicitor-client privilege.

The adjudicator reviewed relevant case law on waiver of solicitor-client privilege. She found that, even if the privilege did apply, when the region allowed the appellant to review the documents, it waived the privilege. Further, it was barred from claiming any discretionary exemptions after allowing the requester to view the records. The waiver did not apply, however, to the records which the region transferred to the town, and in which the town had a greater interest. She upheld the region's transfer decision for most of the records, citing a number of reasons, including the significant prejudice to the town if the transfer was not permitted, and the existence of a parallel outstanding request to the town.

The adjudicator referred to the worthy intentions of the region in following the "reasonable and administratively feasible" process that it used in dealing with a broad request. However, she also noted that there is point where informality ends and the provisions of the law must govern. In this case, that line was crossed.

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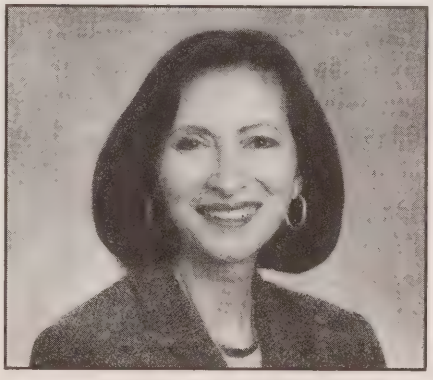
ANN CAVOUKIAN, Ph.D., COMMISSIONER

Misconceptions about privacy must be addressed: Cavoukian

There are common misconceptions about the privacy/security conundrum that both cause confusion and waste resources that could be devoted to protecting privacy, says Ontario Information and Privacy Commissioner Ann Cavoukian.

"Organizations that use personal information increasingly confront the issue of privacy," she told the *Privacy and Security: Totally Committed* conference at the University of Toronto in early November. "While many of them commit to addressing privacy, one particularly confusing and troublesome issue they face centres on the complex and largely undefined relationship between the disciplines of privacy protection and information security."



Commissioner Ann Cavoukian.

In her opening address to the conference, the third annual privacy and security workshop jointly sponsored by the IPC and the University of Waterloo's Centre for Applied Cryptographic Research, the Commissioner announced that the IPC is working with Deloitte & Touche on a joint paper that will address the common misconceptions. The paper will also suggest several business, organizational and technical approaches that would not just help companies meet regulatory compliance, but enhance their information programs.

"We hope to provide sufficient encouragement to senior management to rethink the placement, priorities and resources devoted to security and privacy throughout their enterprises," said the Commissioner.

Privacy and security are not the same thing, she stressed. "Security is an organization's ability to control access to the information it holds, while privacy is an individual's ability to control the uses of his or her personal information. Keeping something 'secure' does not guarantee privacy! An organization may have a database with extensive access controls, but if it uses the personal information in that database for secondary purposes for which the individual has not consented, then there is zero privacy."

"All organizations need to be made aware that privacy can be a minefield – it is an issue that must be fully addressed," said the Commissioner.

CONTINUED ON PAGE 2

In this Issue:

Recent IPC publications

The IPC has issued (in order of publication) the following publications and submissions since the last edition of *IPC Perspectives:*

Privacy Review: Chatham-Kent IT Transition Pilot Project, a review by the IPC of the Chatham-Kent IT Transition Pilot Project. April 2002.

2001 Annual Report. June 2002.

Security Technologies Enabling Privacy (STEPs): Time for a Paradigm Shift. Many security technologies can be redesigned to minimize or eliminate their privacy invasive features, yet remain highly effective tools. June 2002.

Opening the Window to Government: How e-RD/AD Promotes Transparency, Accountability and Good Governance. This paper outlines how governments can use electronic routine disclosure and active dissemination techniques to further the goals of open government. June 2002.

Submission to the Standing Committee on General Government regarding Bill 58, an Act to amend certain statutes in relation to the energy sector. This submission, in the form of a letter from Commissioner Ann Cavoukian to Steve Gilchrist, chair of the Standing Committee on General Government, outlines the access implications associated with Bill 58, the *Reliable Energy and Consumer Protection Act, 2002*. June 2002.

Privacy Assessment: The University Health Network's Response to Recent Breaches of Patient Privacy. This report reviews the UHN's efforts to ensure that the inappropriate access of electronic patient records of May 2002 does not reoccur. July 2002.

Processing Voluminous Requests: A Best Practice for Institutions. This publication provides strategies to assist institutions in processing voluminous requests. The paper was a joint project of the IPC and the Information and Privacy Unit of the Ministry of Natural Resources. September 2002.

Privacy and Digital Rights Management (DRM): An Oxymoron? This paper outlines the factors that gave rise to DRM technology, the impact of DRM on the privacy rights of consumers, proposes how to embed privacy into DRM technologies and offers privacy tips to consumers. October 2002.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Privacy misconceptions

CONTINUED FROM PAGE 1

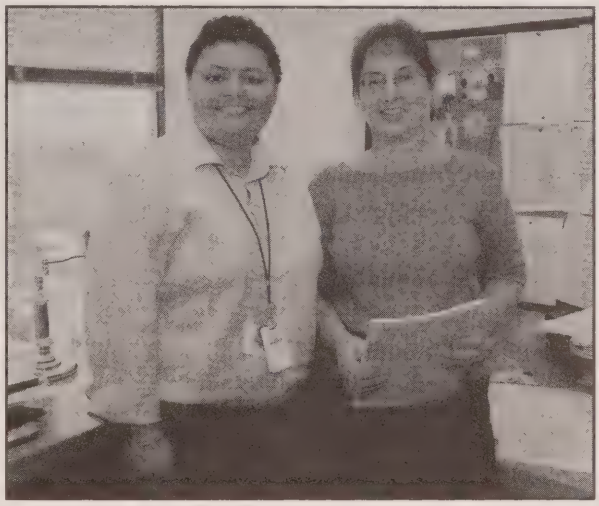
Among the other highlights of the conference – which attracted speakers and delegates from across North America – were a number of sessions that examined privacy and security in the post 9-11 world, and a mock public health inquiry based on a specially crafted scenario – a breach of a patient scheduling system. The case involved electronic personal health information (including two appointments a man had made at a regional cancer centre) being garnered by a hacker and ultimately posted to a health chat room on the Internet. The information ended up with an insurance company that the man was seeking to obtain insurance from. The mock inquiry (set up as if it were being conducted by the IPC) included the participation of a number of special guests, including Justice Horace Krever, well known in the privacy field for his landmark, three-volume report in 1980 on the confidentiality of health information.

The mock public health inquiry concluded with recommendations for best practices for the collection, use and disclosure of personal health information held in electronic form.

Changing places: A mediator exchange between Ontario and Nova Scotia

Someone named Susan is sitting in Giselle's chair at the office of the Information and Privacy Commissioner/Ontario. And Susan has even moved into Giselle's Toronto home. But Giselle doesn't mind – she is thousands of kilometres away, living in Susan's Nova Scotia home and working in Susan's office.

Giselle Basanta, a mediator with the IPC, and Susan Woolway, a mediator/investigator with the Nova Scotia Freedom of Information and Protection of Privacy Review Office in Halifax, have swapped roles – and homes – for eight months. This mediator exchange, launched at the beginning of September, continues until May 1.



Giselle Basanta (left) of the IPC and Susan Woolway of the Nova Scotia Freedom of Information and Protection of Privacy Review Office have traded jobs – and homes – for eight months.

Basanta, a member of the IPC's provincial mediation team who has held a number of roles at the IPC, was the driving force behind the mediator exchange program.

In 2001,Woolway spent a week in Toronto meeting with IPC staff and observing how the Tribunal Services Department functioned. After subsequent telephone discussions with Woolway, Basanta suggested the possibility of a full mediator exchange.

The two offices have an excellent relationship. When Nova Scotia was setting up its Freedom of Information and Protection of Privacy Review Office, Diane Frank, the IPC's manager of mediation, served on the panel that interviewed candidates for Woolway's mediator position.

There are major differences between the two offices, one of them being size. Woolway is the only mediator in the Halifax office, while Basanta is one of 11 mediators at the IPC. As well, the Nova Scotia Review Office is based on an ombudsman model rather than a commissioner model. The Review Officer is an independent ombudsman appointed by the Governor in Council. Though not an officer of the legislature, he can be removed from office only by a vote of the legislature. Ontario Commissioner Ann Cavoukian is an officer of the legislature.

The Review Officer will accept appeals, known as *requests for review*, from applicants who are not satisfied with the response they receive from an application to a public body covered under the legislation. The Review Officer will consider the arguments of both parties and may make recommendations to the public body. Unlike Ontario's Information and Privacy Commissioner, Nova Scotia's Review Officer does not have the power to make binding orders. But he does have the authority to require a public body to produce, for his review, any document that he feels is relevant to a request for review. He may also enter and inspect any premises occupied by a public body.

Both the Ontario and Nova Scotia offices place an emphasis on trying to resolve appeals informally through mediation.

For Basanta and Woolway, the mediator exchange provides a hands-on opportunity to work on access and privacy issues in another jurisdiction, as well as to experience life in another province.

Woolway hopes to acquire additional skills while serving as part of a much larger team, while Basanta has the opportunity to work in a number of diverse roles at the Halifax office.

Continued on Page 8

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Interim Order MO-1539-I
Appeal MA-010196-1
Windsor-Essex Catholic District School Board

The appellant appealed a decision by the Windsor-Essex Catholic District School Board denying access to certain information relating to accounts rendered by a named solicitor. During the course of the inquiry conducted by the IPC, the board objected to sharing certain portions of its written representations with the appellant. The board also expressed concerns about the use to which the appellant would put its representations, and in particular, that the appellant would publish them in his newspaper.

The adjudicator issued an interim order to rule on the issues of whether these portions of the board's representations should be shared, and whether the adjudicator could impose conditions on the appellant's use of the board's representations.

The adjudicator reviewed the IPC's *Practice Direction 7*, which sets out the procedures for sharing parties' representations during an inquiry. She agreed that some portions of the board's representations were no longer relevant to the issues in the appeal and should not be shared. She found that other portions, however, did not qualify under any of the three criteria for withholding representations as set out in *Practice Direction 7*.

First, none of the information "would reveal the substance of a record claimed to be exempt." The adjudicator reasoned that simply referring to the type or nature of a record without specific details as to its contents does not reveal the record's "substance."

Second, the information would not "be exempt if contained in a record subject to the *Act*." The adjudicator rejected the board's argument that disclosing certain portions of its representations would provide the appellant with information he had not requested. While a request may influence whether or not representations are relevant to the issues in the appeal, if the representations are relevant and are not otherwise confidential, as in this case, they will be shared.

Finally, the adjudicator found that the board had not established that any of the information should not be disclosed "for any other reason." She noted that the sharing of representations procedure was implemented "to enhance fairness in the inquiry, to improve the processes for gathering and testing evidence, and to provide decision makers with better quality, more relevant and more focused representations."

Accordingly, in order to afford the appellant the opportunity to know the case he had to meet and to assist him in making meaningful representations, the adjudicator decided to share certain portions of the board's representations with the appellant, and to withhold other portions.

The adjudicator also denied the board's request that she place conditions on the appellant's use of its representations. She dismissed the board's argument that an inquiry under the *Act* should be treated like an examination for discovery under the *Rules of Civil Procedure*, which imposes limits on the use of information exchanged. Rather, she found that an inquiry is analogous to a hearing, whose purpose is to receive and test evidence and argument and to render a decision by an impartial decision-maker.

The adjudicator referred to Interim Order PO-2013-I, a recent order by Assistant Commissioner Tom Mitchinson, which explained the rationale for the Commissioner's discretion under section 41(13) of the *Act* to deny parties full access to all proceedings and documents used in the inquiry process. Processing an appeal under the *Act* raises unique confidentiality concerns, such as ensuring that the contents of a record at issue are not disclosed during an appeal. *Practice Direction 7* was drafted to address these unique confidentiality considerations in any decision by the Commissioner to share the representations of one party with another.

The adjudicator found that parties are generally free to use representations shared with them, subject to any other legal recourses that might be available outside the *Act*. In this case, she was not persuaded that the use of the board's representations should be restricted simply because the

Continued on Page 5

board was concerned that they might "be used to embarrass it or publicize its arguments beyond this proceeding."

Order PO-2028
Appeal PA-000239-1
Ministry of Northern Development and Mines

The Ministry of Northern Development and Mines received a request for records connected to a Northern Ontario Heritage Funding Corporation (NOHFC) project that involved a significant contribution by the fund to an identified corporate third party.

After notifying the third party, the ministry provided access to most of the responsive records, but denied access to four records. The requester appealed the decision. During IPC-led mediation, all issues were resolved except the application of the section 13 (advice or recommendations) exemption to portions of one record.

The remaining record was a *project evaluation report* (the report) prepared by an employee of the ministry and provided to the board of directors of the NOHFC. This board had the authority to make a decision on funding.

The ministry stated that the report is the mechanism by which staff evaluate proposals and provide advice to the board. The funding decision is made by the board, which may or may not act on the advice in the report.

Assistant Commissioner Tom Mitchinson reviewed the application of section 13 to the record and found that a number of the requirements under this section were met. The only issue remaining was whether the record contained "advice" for the purpose of section 13.

The Assistant Commissioner reviewed the authorities dealing with the phrase "advice or recommendations" and rejected the ministry's position that "advice" includes "information, notification, cautions, or views where these relate to a government decision-making process." He stated that in interpreting and applying the word "advice," one must consider the specific circumstances, and determine which information reveals actual advice. It is only the disclosure of advice, not other types of information, which could reasonably be expected to inhibit the free flow of information within the deliberative process of government for the purpose of section 13(1).

The key findings in the appeal relate to two paragraphs of the record listed under the heading "potential issues," and three funding "options" which also list the pros and cons of each option. The Assistant Commissioner decided that the two paragraphs under "potential issues" simply drew matters of potential relevance to the decision-maker's attention, and did not qualify for exemption. Concerning the three "options" with the corresponding pros and cons, the Assistant Commissioner stated that, where the record contains no specific advisory language or an explicit recommendation, careful consideration must be given to determine which portions of a record contain "mere information" and which, if any, contain information that actually "advises" a suggested course of action, or allows one to accurately infer such advice. If disclosure of any portions of a record would reveal actual advice, then section 13(1) applies.

The Assistant Commissioner noted that, in this appeal, the role of staff did not extend to "recommending a particular course of action." He then found that the description of each option was "mere information" that identified the various factual components of each option broken down into various pre-determined categories. It did not contain information that could be said to "advise" the NOHFC in making its decision on funding. As well, the "pros and cons" accompanying each option did not contain any explicit advice. There was no statement recommending that NOHFC choose a particular option, and no explicit indication as to which option was preferred.

The Assistant Commissioner also found that, when considered as a whole and in the context of the roles played by ministry staff and the board, the disclosure of the information would not permit accurate inferences to be drawn as to the nature of any advice implicitly contained in these portions of the record.

Accordingly, section 13(1) did not apply to any portion of the report.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Interest-based mediation

The Ministry of Finance received a request for records pertaining to viatical life settlements, senior settlements, life settlements, living benefits or accelerated death benefits (in general, or to named companies and individuals), contained within the files of the Ontario Securities Commission (the OSC), from January 1994 to the present.

The ministry identified 311 records as responsive to the request and granted partial access, while denying access to the remaining records on the basis that they are: advice or recommendations, law enforcement, relations with other governments, third party, personal information or publicly available.

The requester, a named company, appealed the ministry's decision, noting that the only records released were copies of previously published materials.

During mediation, the appellant expressed concerns about its own dealings with the OSC and was seeking guidance regarding the viatical settlement industry. On this basis, the appellant agreed to remove information regarding other companies and individuals from the scope of the appeal and to focus on information relating to the appellant. The mediator then discussed with the appellant alternatives to obtaining access to the records. The appellant agreed that it would be useful to pursue answers to its questions and concerns, as opposed to seeking access to the records requested.

The ministry agreed to the approach suggested by the appellant and the mediator. The ministry provided the appellant with information, other than the records at issue, and answers in response to the appellant's questions and concerns.

The appellant was satisfied with the information and answers provided by the ministry and the appeal was resolved on that basis.

Teleconference leads to finding records

The Ministry of the Environment received a request for records relating to environmental concerns (from 1990 to the present) pertaining to a property described as a landfill at the intersection of two named streets. The requester, a named company, said there was no municipal address but provided a detailed description of the property as it appeared on the registered notice to a Certificate of Prohibition, along with owner information.

The ministry's decision was that no records exist in response to the request, but that records which pertain to an inspection on a closed landfill were located and access was granted to them.

The requester appealed the ministry's decision on the basis that the few records provided with the decision letter were not responsive to the request and that responsive records should exist. The requester (now the appellant) explained that the reason other records should exist is that a title search had revealed a Notice of a Certificate of Prohibition, which was registered on title on or about January 12, 1996. Based on this, there would have been other documents, in connection with the property, which gave rise to the registration.

In the course of mediation, a teleconference was held with the ministry's Freedom of Information co-ordinator, his assistant, the mediator and the appellant. The focus was to determine the exact address of the property for which records were being requested. After exchanging information, the co-ordinator agreed to conduct a further search for responsive records.

As a result of this new search, the ministry located 1824 responsive records and issued an access decision. The ministry's decision letter went on to explain that a large file was located (at a district office) pertaining to the landfill site and the adjacent properties. Documents in the file,

CONTINUED ON PAGE 8

Mississauga-Brampton Educational Initiative set for November 19

Under its *Reaching out to Ontario* program – one of the foundation stones on which the IPC's outreach program has been built – an IPC team visits four or five regions each year for a series of meetings and a public information session.

On November 19, an IPC team will be visiting Peel Region for the *Mississauga and Brampton Educational Initiative*. Other initiatives this year have included Barrie-Orillia, Windsor and Sault Ste. Marie.

Among the key sessions will be a presentation by Commissioner Ann Cavoukian to a special breakfast meeting of the Mississauga Board of Trade. That evening, an IPC team led by Assistant Commissioner Tom Mitchinson is holding a public information meeting (7 p.m., Committee Room B, Mississauga Civic Centre, 300 City Centre Drive, 2nd Floor).

Other events include a seminar for municipal freedom of information and privacy co-ordinators from throughout Peel and Toronto, a presentation to the staff of the Mississauga Community Legal Services, presentations to three Grade 5 classes in Brampton, a meeting with both elementary and secondary school educational consultants from the Dufferin-Peel Catholic District School Board and the Peel District School Board and meetings with local media.

Assistant Commissioner Tom Mitchinson, Diane Frank (left), the IPC's manager of mediation, and Mona Wong, team leader of the municipal mediation team, will be conducting the public information meeting the IPC is holding Nov. 19 in Mississauga.

Upcoming presentations

November 26. Director of Policy and Compliance Brian Beamish will address the Canadian Life and Health Insurance Association on the topic of privacy in the life and health insurance industry, in Toronto.

December 10. Commissioner Ann Cavoukian is a keynote presenter at an Insight Information e-healthcare conference on privacy issues related to electronic health records in Toronto.

December 11 – 12. Senior Privacy Development and IT Officer Mike Gurski will take part in an Ottawa panel addressing the issue of integrating privacy and security into government online, entitled *Dispelling Myths About Privacy, Security and e-Government*.

December 12. Commissioner Ann Cavoukian will deliver the opening address to an information meeting of the Ontario Hospital Association in Ottawa.

January 30 – February 1. Director of Policy and Compliance Brian Beamish will address the Ontario Library Information Technology Association Super Conference at the Metro Toronto Convention Centre.

January 30. Director of Legal Services Ken Anderson will speak on privacy issues in the workplace at an Insight Information conference entitled *Privacy Law and Effective Investigations in Ontario Workplaces*, in Toronto.

Mediation success stories

CONTINUED FROM PAGE 6

explained the ministry, refer to the site as (another name and address) adjacent to closed landfill site (identified by number); and that all of these records are housed together in one file under the heading (address).

The appellant indicated that she was satisfied with the further search conducted by the ministry and considered the appeal of the reasonableness of the search to be resolved.

Custody or control

The County of Norfolk received a five-part request for records relating to the county's purchase of sand and salt mix from a named company.

The county issued a decision letter addressing all five parts of the request. With respect to part four of the request (a copy of a particular road superintendent's daily work log journal for a three-month period), the county's decision was that the record was not in its custody or control as it was considered the personal property of the owner.

The requester appealed the county's decision only with respect to part four of the request. He took issue with the county's position that the logbook was personal property, maintaining instead that the superintendent was a public employee and that the journal relates to employment activities.

The mediator contacted the county's Freedom of Information and Privacy co-ordinator and discussed previous orders of this office that set out the criteria for determining custody or control. The county then agreed that custody or control was no longer an issue, but rather the issue was whether its search for the record was reasonable.

With the agreement of the co-ordinator, the mediator contacted the (now former) superintendent, who was no longer an employee of the county. The former superintendent advised that he did not have the logbook and that he left it at work when he left his employment; but, should it be located, he had no objection to the logbook being released.

The co-ordinator then personally undertook additional searches and checked all relevant departments. While the co-ordinator did not find the former superintendent's logbook, she did locate the notes of the foreman – a record entitled "Supervisor's Daily Work Report." Included with that record was a page listing the sand purchased for the year in question.

The county granted access to that record, subject to severances of personal information. Although the record released to the appellant was not the record he had originally requested, it contained the information the appellant was seeking and the appeal was resolved to his satisfaction.

Changing places

CONTINUED FROM PAGE 2

This is not the first staff exchange the IPC has been involved in. Several years ago, David Goodis, then an IPC lawyer and now manager of adjudication in Tribunal Services, spent a year in Sydney, Australia, in an exchange with a lawyer from the then office of the Privacy Committee of New South Wales. The two switched houses for the duration of the exchange. That secondment agreement was modified for the mediator exchange.

Giselle Basanta and Susan Woolway would like to acknowledge the encouragement and support of IPC Assistant Commissioner Tom Mitchinson (head of Tribunal Services) and Review Officer Darce Fardy throughout the process.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian and the IPC's head of technology services, Greg Keeling, review key changes made to the IPC's Web site to better serve users.

IPC Web site tackles user needs

With more than 20,000 visitors a month trying to access more than 5,000 documents, the IPC Web site got a much-needed tune-up earlier this year. The relaunch, which represents a new look and new platform, is the fourth major update since the site first went live in mid-1996.

"Like the Internet itself, the IPC Web site is constantly evolving and developing as the underlying technology changes," notes Ontario Information and Privacy Commissioner Ann Cavoukian. The IPC Web site has grown substantially since its early days and now represents a substantial on-line resource library of IPC Orders and Privacy Complaint reports, publications of all types and news releases. It also includes links to other access and privacy sites and a host of other information."

Seven years have passed since the IPC launched its first Web site. At that time, Web technology was in its infancy and few organizations (and fewer individuals) had access to the Internet. Approximately two years after the initial launch, the IPC "modernized" the site with the latest technological trend of the time – frames. The "framed" site allowed for a consistent navigation window to be viewed on the left side of the screen while the content itself was viewed in the right-hand frame. After some time however, it was determined that the value of

Continued on page 3

this Issue:

IPC Connects with communities

When the IPC goes to Sarnia in mid-May, it will mark the 14th community visited since its *Reaching Out to Ontario* (ROTO) program was launched four years ago.

"The IPC has an important statutory responsibility to educate members of the public on their right to obtain government records and also the right to expect that governments will adequately protect their personal privacy," says Assistant Commissioner Tom Mitchinson, who will lead the IPC team that is going to Sarnia.

"We find that, unless we get out into the community and talk to people, they're often not even aware that FOI and privacy legislation exists. Through ROTO, we try to make citizens aware of the important rights the statutes create, and the corresponding obligations imposed on provincial and municipal governments," adds Mitchinson.

The IPC visits four communities each year. A team of about five people splits up to try to meet with a full range of different "publics," including business and community groups, staff at local legal aid clinics and educational consultants from area school boards. Team members also speak to university and college faculty and students, and attend a number of Grade 5 classes to deliver the IPC's *Ask An Expert* program, which was specially designed as part of the social studies curriculum.

"Our visits are always well received, and we find that, once people know about the legislation and how to use it, there is a great deal of interest," said Mitchinson. "And the kids love it too. It always amazes me how easily they grasp the concepts of government accountability and privacy, and how well these values fit into the Grade 5 learning program".

The local media play a crucial role in educating the public and ROTO initiatives include a number of media events. "We always meet with the editorial board of the largest local newspaper, and do a radio call-in show wherever one exists," said Mitchinson. "Journalists help to promote our visit and at the same time learn more about the legislation itself and how it can be used."

While in a community, IPC staff host a seminar for area municipal and provincial Freedom of Information and Privacy Co-ordinators. This is an opportunity to meet front-line staff that do the lion's share of FOI and privacy work on a day-to-day basis, and provide encouragement and advice.

"One of our primary goals is to find ways to work collaboratively with various organizations and institutions to promote practices that best serve the citizens in their communities," said Mitchinson.

Ontario Communities Visited by ROTO

1999

- London & St. Thomas: Nov. 8-11

2000

- Kingston & Belleville: April 17-18
- Thunder Bay: June 19-20
- Hamilton-Wentworth & Burlington: Nov. 7-8

2001

- Ottawa: March 26-27
- Niagara Region: May 17
- Sudbury: Sept. 24-25
- Kitchener-Waterloo: Dec. 11

2002

- Barrie & Orillia: March 26
- Windsor: May 16-17
- Sault Ste. Marie: Sept. 10-11
- Mississauga & Brampton: Nov. 19

2003

- Guelph & Wellington County: March 25

Communities

continued from page 2

The *Sarnia and Lambton County Educational Initiative* on May 15-16 will include a new wrinkle. Instead of the evening public meeting that was a feature of the first 13 ROTO initiatives, the IPC is setting up a display at the Lambton Mall in Sarnia. IPC staff will be on hand from 2 to 9 p.m. Thursday, May 15 to meet with members of the public, provide them with information, and answer any questions they have about FOI and privacy.

The full program for the *Sarnia and Lambton County Educational Initiative* is still being finalized, but it will include, besides the display at the mall:

- a presentation by the Assistant Commissioner to a special breakfast meeting of the Sarnia Lambton Chamber of Commerce;
- presentations to educational consultants from the Lambton Kent District School Board and the St. Clair Catholic District School Board (about the IPC's teachers' guides for elementary and secondary school teachers);
- a seminar for Freedom of Information and Privacy Co-ordinators from the Sarnia/Lambton area;
- presentations to two Grade 5 classes;
- meetings with local media.

This is the second initiative this year under the *Reaching Out to Ont*ario program. An IPC team was in Guelph and Wellington County in late March. The tentative schedule for the balance of 2003, calls for IPC teams to visit North Bay in September and Peterborough in October.

Web site

Continued from page 1

frames was offset by the increased behind the scenes efforts required to maintain the framed environment.

After an interval of about two years, the IPC site changed again, this time to a simpler interface with an index-based main page and a navigation banner. Consistent with the overall Web site trends at the time, the focus was on content over design and graphics.

By this time, the IPC Web site had become the primary means to distribute news and publications (aside from e-mail) to an ever-growing audience interested in access and privacy issues.

Over its seven years, the IPC Web site grew in size and complexity. Today, there are over 5,250 documents on the Web site, including HTML, PDF and PowerPoint files (three standard file formats). Over 500 Web sites from around the world link to the IPC's site and the site receives around 20,000 visitors each month.

With additional content being added to the site daily, maintaining the site was an increasing challenge. New Web tools have emerged over the last few years and the IPC decided to migrate its platform to a content-management system. This transition took place last year and the new site was rolled-out in January 2003.

Aside from various changes to the back-end side of site operations, the new site offers a fresh, contemporary look that is consistent throughout. A location bar automatically appears on each page to help users navigate throughout the site. Other design changes were implemented to help improve overall site usability.

"Looking at the traffic we see daily on our site, it is clear that people and organizations are becoming increasingly dependent on the ability to access and download key files and documents," adds the Commissioner.

"The real advantage of the Web site is that it can be managed in real-time – allowing for the updating of information and the releasing of decisions almost immediately. The changes we have made to the site are critical if we are to continue to serve the needs of the public in exercising its right to access government information and ensure the protection of personal privacy."

The IPC Web site will continue to adapt and change, in response to user feedback, additional content resources and improved technology. Performance issues will be addressed in the near future as part of a systems upgrade over the spring and summer, so keep coming back to www.ipc.on.ca.

Summaries

Order MO-1614
Appeal MA-020032-2
City of Toronto

The City of Toronto (the city) received a broadly worded multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to animal care services.

The city issued a decision letter that included, among other things, a fee estimate of $90,000 based on 26 months of search time.

On appeal, the adjudicator first looked at whether the city had made a proper interim decision under the *Act*. The adjudicator found that the city's interim decision was inadequate because it did not: (i) provide sufficient detail to substantiate the magnitude of the fee estimate; (ii) identify possible exemptions that may apply; and (iii) indicate the extent to which access is likely to be granted.

The city provided extensive representations in support of its fee estimate, including evidence that searches would need to be done in numerous locations and that a large volume of both hard-copy and electronic records would have to be reviewed.

The adjudicator acknowledged that the search would be long and arduous, but was not persuaded that this justified the $90,000 fee estimate. In addition, the adjudicator noted that the appellant still did not have enough information to make an informed decision about whether or not to pay the fee.

In addition, the adjudicator was not persuaded that the city's 26-month time extension was reasonable in the circumstances.

As the appellant had been waiting for an access decision for well over a year, and the city had two opportunities to provide him with an access decision, the adjudicator found that it would be inappropriate simply to require that the city provide the appellant with a proper interim access decision and fee estimate.

However, the adjudicator was mindful that any possible remedy needed to balance the rights and expectations of the appellant to a substantive decision under the *Act*, with the city's right to recover some of its costs for locating the many and varied records responsive to the appellant's request.

The adjudicator disallowed the city's fee estimate and time extension, and ordered the city to provide the appellant with: (i) a final access decision on records accessible through the city's Chameleon database; (ii) a final access decision for all other responsive records that relate to the former City of Toronto and to the current amalgamated city; and (iii) a proper revised interim decision letter and fee estimate for all other records response to all parts of the appellant's request that relate to the other former cities that now comprise the amalgamated city.

The adjudicator gave the city 30 days to provide the first final decision letter, and 60 days to provide the second final decision letter and the proper revised interim access decision.

Order PO-2112
Appeal PA-020055-1
Ministry of Tourism and Recreation
Ontario Place Corporation

A legal action had been initiated by a food service provider (the affected party) against the Ministry of Tourism and Recreation (the ministry) and Ontario Place Corporation. The ministry received a request for access to records relating to the settlement of that action.

After notifying the affected party, the ministry granted access to some records and denied access to others based on a number of exemptions, including the solicitor-client privilege exemption in section 19 of the *Act*. The appellant appealed the decision.

One of the key issues the adjudicator addressed was the argument made by both the affected party and the ministry that these records,

which reflected the settlement of the action, were for that reason exempt under section 19.

These parties equated settlement privilege with the litigation privilege aspect of the section 19 solicitor-client privilege exemption, and argued that the records should qualify for exemption under that section. In addressing this issue, the adjudicator drew a distinction between settlement privilege and litigation privilege, and reviewed the purposes behind these very different privileges.

The purpose of the litigation privilege is to afford a party in an action the ability to gather information and prepare his or her case without fear of having to disclose this information to the opposite party in the litigation.

Settlement privilege, on the other hand, is a rule of evidence that prevents the disclosure of information regarding offers and settlement discussions to the decision-maker hearing the dispute between the parties.

This privilege is intended to encourage parties to feel free to enter into "without prejudice" discussions without fear that the subject matter of these discussions would be used against them in that proceeding. It is a rule of evidence that prevents the use of the information in these records in the particular proceeding; it does not determine the applicability of the section 19 exemption to records under the *Act*.

The adjudicator also identified the strong policy rationale for interpreting the phrase "solicitor-client privilege" as including the two common law concepts of "solicitor-client communications privilege" and "litigation privilege".

In both these situations, disclosure to a party who is outside the solicitor-client relationship is deemed to cause harm of some sort – either to the ability of clients to consult privately and openly with their solicitors, or to the adversarial system of justice.

The policy rationale for this interpretation does not, however, apply to settlement privileged documents. That privilege is designed to prevent a party from putting certain communications into evidence in a proceeding before a court or tribunal. The admissibility of those documents would be decided by the court or tribunal dealing with that matter.

Accordingly, the adjudicator determined that records that are settlement privileged are not for that reason alone subject to litigation privilege. He went on to find that none of the records qualified for exemption under section 19.

Upcoming presentations

June 7. Commissioner Ann Cavoukian will address the annual conference of The Canadian Health Record Association and The Ontario Health Record Association*: The Health Information Management Train: Get on Board, Get on the Right Track,* on the *Implications of PIPEDA/FOIP on the HER,* in a plenary session at the Colony Hotel in Toronto.

June 9. Commissioner Ann Cavoukian will give a presentation: *The privacy imperative: Earn customers' trust or lose them (and their friends) forever,* at the annual International Association of Business Communicators (IABC) 2003 International Conference in Toronto.

June 12 & 13. Commissioner Ann Cavoukian **will speak at the *Access and Privacy 2003: Exploring New Solutions*** conference, sponsored by Adsum Consulting and the University of Alberta, at the Telus Centre in Edmonton.

June 16. Director of Legal Services, **Ken Anderson,** will speak on Privacy Law in the workplace at The Canadian Institute's conference: *Meeting Your Obligations for Privacy Compliance – How to Comply with Canada's Privacy Regime In Time For January 1, 2004,* at the Renaissance Toronto Hotel.

July 8 & 10. Commissioner Ann Cavoukian will speak on IT Security at INFONEX Inc.'s *IT Security Conference* in Ottawa.

October 21, 22 and 23. Director of Policy and Compliance, **Brian Beamish,** will present and take part in a panel at the Ontario Provincial Police Anti-Rackets Investigation Bureau's *Identity Theft Conference* at Casino Rama.

Mediation success stories

Interest based mediation

A client of the Family Responsibility Office (FRO) submitted a request to the Ministry of Community, Family and Children's Services (the ministry) for access to his entire file. In particular the requester wanted to know why FRO took enforcement action when, according to him, he was not in arrears.

The ministry granted partial access to the records. Parts of the records were withheld on the basis that they were either subject to the law enforcement exemption or that disclosure would be an unjustified invasion of other individuals' privacy.

The requester appealed the ministry's decision. At the outset of mediation the appellant expressed to the mediator his ongoing frustration with what he viewed as FRO's unclear answers to his questions whenever he had made enquiries about his file. As a result, the mediator thought that some dialogue between the appellant and FRO could be fruitful in addressing the appellant's issues and concerns.

In an effort to resolve the appeal and on the mediator's suggestion, the ministry arranged a meeting with the appellant and a representative from FRO. During the course of this meeting, the representative from FRO clarified the nature of the information that had been withheld from the records, and agreed to disclose some additional information to the appellant. The FRO representative also answered the appellant's questions relating to the processing of his file and was apologetic about any miscommunication that had occurred in the appellant's previous dealings with FRO.

Shortly after the meeting concluded, the appellant expressed to the mediator what a difference the meeting had made to him; his issues and concerns about the way in which FRO had processed his file had now been clarified and responded to, and that he no longer felt it necessary to obtain access to the remaining undisclosed portions of the records. Based on this, the appellant advised the mediator that he was satisfied and considered the appeal resolved.

Working together to narrow the request and reduce the fee

A French language school board received a request for purchase orders and vendor quotes over $5,000 that were not part of the public tender process and were authorized by three named individuals at the board. The request covered a five- year period.

The board issued an interim decision and $16,000 fee estimate, advising that it would take approximately six months to search for these records and that some of the records would be exempt under sections 10 and 11 of the *Act*.

The requester appealed the board's decision. In the course of mediation the board advised that not only did it not maintain a centralized binder of these records, but also it would be time-consuming to search through the records to identify which records were not part of the tender process and which purchase orders/requisitions had been authorized by the three named individuals.

Based on this explanation of the board's record-keeping practices the appellant narrowed his request to all purchase orders/requisitions for a two-year period.

In response to the narrowed request, the board provided the appellant with three format options for receiving the information, with the estimated fees ranging from $53 to $360. The appellant chose the $53 option, being an electronic version of all purchase orders/requisitions over and under $5,000. Since the only exemptions the institution had cited had been in relation to vendor quotes, which were no longer at issue, the appellant was granted full access to the records.

Addressing appellant's future needs

A small municipality received a request from a construction company for records that related to the construction of covered boat slips by the owners of a particular property. Specifically, the request was for building permit applications, architectural and engineering drawings, inspection reports, correspondence and any other related records.

The municipality sought the consent of the property owner to release the records. The property owner objected to the release of the records, claiming, among other things, that the drawings were unique and that their proprietary interest would be compromised should the records be released. On this basis, the municipality denied access to the records, relying on section 10 of the *Act*.

The requester appealed. During the course of mediation the appellant explained that it had constructed some structures on the property but other structures on the same property, built by another company, had collapsed. The appellant wanted access to the records to protect itself from liability should there be future litigation.

Since access to the records was not required at this time, the mediator facilitated a resolution in which the municipality agreed to retain the records for a specific time period beyond their usual retention period. While access to these records continued to be denied under the *Act*, the records would remain available so that the appellant could subpoena them should they be required in a court proceeding.

Teleconference clarifies issues and builds relationship

The Ministry of Public Security and Safety (the ministry) received a request from the requestor's representative for all police officers' notes, witness statements and the video-tape of a named witness relating to a fraud investigation of the requestor by the Ontario Provincial Police (OPP). The representative provided the ministry with a signed consent from the named witness.

The ministry issued its decision that no videotape interview exists, but disclosed other records with severances pursuant to section 49(b) [unjustified invasion of another individual's personal privacy] of the *Act*.

The representative appealed the ministry's decision. In initial conversations with the representative, the mediator clarified that the severed records were not at issue. Rather, the issue at appeal was whether additional records should exist.

As a result of a number of separate conversations with the representative and with the ministry, the mediator determined that the representative was seeking some very specific records. A teleconference was set up between the parties and the mediator. The ministry's representative detailed the process she had followed to search for the requested records. The requestor's representative in turn explained exactly what records she was looking for (notes taken by two named OPP officers) and why she thought they might exist. According to the ministry, the OPP did not conduct the investigation, but referred the matter to a local police force. Nevertheless, the ministry agreed to conduct a second more specific search using the additional information provided by the requestor.

The ministry conducted the second search but no additional records were found. Based on the information exchanged during the teleconference and the additional specific search performed by the ministry, the requestor was satisfied and the appeal was settled on that basis.

As a postscript, the ministry representative remarked that through the mediation process, that in this case involved speaking directly with the representative, she had a better understanding of the representative's position and felt a relationship of trust had developed.

The IPC at ROMA/OGRA conference

Privacy and access to government information were hot topics at this year's combined conferences of the Rural Ontario Municipal Association (ROMA) and the Ontario Good Roads Association (OGRA).

"The IPC booth was one of the most popular at the event," says IPC Information Officer Gail Puder. "People were very interested in learning more about hot topics like identity theft and access to municipal information. Overall, I handed out over 1,500 publications – about 30 per cent more materials than I did in 2002."

The IPC participated in this annual event for the second year running. The event was held at the Fairmont Royal York Hotel in Toronto on February 24th and 25th. Delegates at this year's conference were far more aware of the IPC's role in access to government information and the protection of personal privacy notes Puder.

"Many more people took the time to ask questions and share their perspectives than they did in 2002," she adds. "A number of councillors and municipal staff that I met the previous year stopped by armed with new questions and concerns – including when ROTO would be in their community."

Besides showcasing the IPC's core publications and most recent papers, visitors could catch Commissioner Ann Cavoukian being interviewed on such hot topics as identity theft simply by picking up earphones and watching a video.

Recent IPC publications

The IPC has issued the following publications and submissions since the last IPC Perspectives:

1. *Access and Privacy in Canada: Developments from September 2001 – August 2002.* Presented by Ken Anderson, Director of Legal Services, at the annual Council on Governmental Ethics Laws (COGEL) Conference. October 2002.
2. *Concerns and Recommendations Regarding Government Public Key Infrastructures for Citizens* examines the potential impact of PKI on the protection of personal privacy and makes recommendations for establishing such systems. December 2002.
3. *If you wanted to know...What are the privacy responsibilities of public libraries?* looks at some common questions library users and library staff may have about privacy rights and what libraries can do to protect privacy. December 2002.
4. *Guidelines of Facsimile Transmission Security.* This updated paper sets guidelines for government organizations developing systems and procedures to maintain the confidentiality and integrity of information transmitted by fax. Revised January 2003.
5. *If you wanted to know...Identity theft and your credit report: What you can do to protect yourself* provides guidelines on what to do about your credit report if your identity/identification has been stolen. Revised February 2003.
6. *Posting Information on Web Sites: Best Practices for Schools and School Boards* is a joint project of The IPC, the Upper Grand District School Board and The Peterborough, Victoria, Northumberland and Clarington Catholic District School Board. March 2003.
7. *Frequently Asked Questions: Privacy Legislation for the Private Sector.* Updated March 2003.

These publications and more are available on the IPC's Web site at www.ipc.on.ca.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Make privacy a priority or face the consequences, warns Commissioner

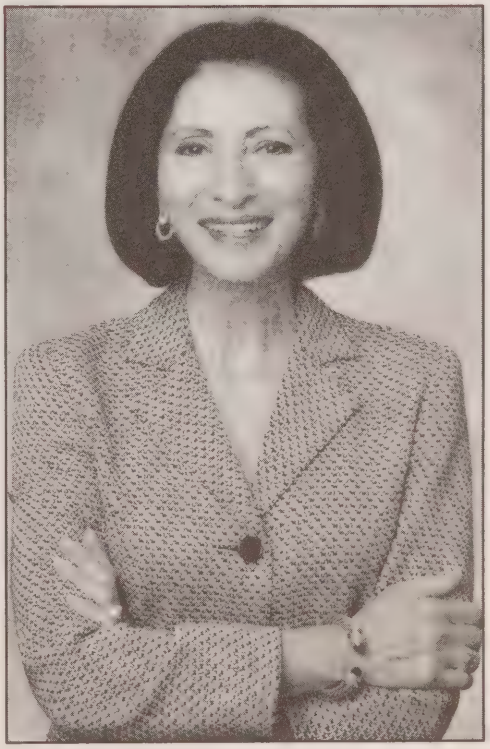
Corporate directors who fail to address privacy as a major issue are failing to live up to their responsibilities to both customers and shareholders, says Ontario Information and Privacy Commissioner Ann Cavoukian.

The reputation that corporations quickly acquire for how they deal with their customers' personal information can either drive business – or drive it away, noted the Commissioner, who recently released a paper aimed directly at corporate directors.

"Personal information must be protected – and more companies are starting to realize it is in their own best interest to do so," said the Commissioner. She stressed that companies that succeed in carving out a reputation for protecting personal information can gain a significant advantage over others. "Research has shown that consumers are becoming increasingly concerned, better informed and more demanding with regard to the protection of their personal privacy."

Privacy and Boards of Directors: What You Don't Know Can Hurt You cites a number of recent privacy breaches where organizations failed to protect personal information. These included:

- a pharmaceutical company that inadvertently disclosed the e-mail addresses of 600 patients who took Prozac;
- a data management company that failed to protect a computer hard-drive that contained the personal information of thousands of Canadians;



Commissioner Ann Cavoukian.

- the misuse of personal health information as part of a promotional campaign for an anti-depressant.

These are just some of the incidents raising questions about the liability of directors in protecting the personal information collected, used and disclosed by their organizations, said the Commissioner.

A lack of attention to privacy, she said, can result in a number of adverse consequences. Among those she cites in the paper are:

CONTINUED ON PAGE 3

In this issue:

Let the public in: A case for greater openness and transparency

This article by Ann Cavoukian and Tom Mitchinson originally ran in the Toronto Star *on October 15, 2003.*

In light of recent abuses to good governance in both the corporate and public sectors, the issue of accountability has taken centre stage. The public's demand for greater accountability is getting stronger and "trust me" is just not good enough. It is not good enough for shareholders who demand accountability from their corporate directors, and it is not good enough for citizens who expect good governance at all levels of government.

For government, transparency is a key requirement to achieve accountability. Our freedom of information law is the vehicle for Ontarians to review what government officials are doing and how they are spending taxpayer dollars.

Commissioner Ann Cavoukian and Assistant Commissioner Tom Mitchinson.

Clearly, the Ontario public is demanding to know how local governments are spending money and how decisions are being made. Last year alone, freedom of information requests to municipalities jumped a full 25 per cent. Citizens now demand that public business be conducted in an open and transparent manner, not behind closed doors and not without prior notice and an opportunity to become involved before a decision is made.

Municipal governments take considerable pride in their open business style and – on one level – they deserve this reputation. However, public concerns are pushing things further, and transparency and accountability have become hot topics in this year's municipal election campaign. In Toronto, for example, at least three mayoralty candidates have complained that too many meetings take place in "backrooms" away from public scrutiny. Some call for tougher ethics rules, and others want to reduce opportunities for closed meetings.

Ontario needs a tough new municipal "Open Meetings" law to bring greater transparency and accountability. The *Municipal Act* does not go far enough here. It does require, with limited exceptions, that Councils conduct their business at open meetings where the public can attend and observe the debate. But accessible, transparent government goes far beyond opening the doors to a meeting.

The broader objective of transparency is to ensure that citizens understand how decisions are made and have an opportunity to participate in the decision-making process. To be truly effective, we need a new law that will encourage integrity in our municipal governments and help ensure that elected and appointed municipal officials operate in the public interest.

This legislation must:

- require municipalities to give the public adequate advance notice of each Council and committee meeting;
- prohibit Councils from considering business not included on a published notice;
- give the public a legal right to complain if it feels that open meeting rules have not been followed;
- establish an efficient and accessible oversight system, with a body responsible for investigating complaints and resolving disputes; and
- provide remedies and penalties if the law has been broken.

The issue of what constitutes a "meeting" has dogged municipalities for years. The courts have even had to step in on occasion to provide direction. The *Municipal Act* attempts to define various types of meetings, but we still read about situations where informal "meetings" take place, without proper notice or quorums, invariably accompanied by cynical allegations that elected officials are trying to avoid an open public process for dealing with controversial issues. Integrity will always be an issue unless we have rules for transparency that are clearly understood and consistently adhered to.

Some municipalities are very good about posting advance notices of meetings, with agenda items clearly described. Some are even tapping into the potential of the Internet as a vehicle to disseminate this information throughout the community. But what if a Council wants to amend an agenda? What if a topic is raised at a meeting that wasn't included in the posted notice? Do these actions erode citizens' democratic rights? These issues need to be more clearly addressed and understood.

The State of Hawaii's *Public Proceedings and Records Act* has grappled with this issue. It prohibits Council from meeting unless written public notice, including a detailed agenda, is provided at least six days prior. If not complied with, the meeting must be cancelled. The agenda of a properly constituted meeting also can't be amended unless the meeting is postponed in order to re-notify the public.

One of the most glaring deficiencies in Ontario's current municipal Open Meetings scheme is the lack of efficient and accessible oversight. What do citizens do if they learn that an issue of public importance was decided in a "backroom"? Who do they turn to when they learn of a meeting that was held without proper notice? A lengthy and costly court process is clearly not the answer. We must have a dispute-resolution process that is flexible and accessible to everyone.

And finally, any open meetings scheme must have teeth. If rules have been broken there has to be a remedy, or series of optional remedies, to address the problem.

With a municipal election campaign underway, we need to hear where candidates stand on a new "Open Meetings" regime. Many candidates, of all political stripes, appear to accept the need to improve integrity and transparency in public administration. Let them now take these worthy concepts and root them in a practical and concrete way. Let them join the voices calling on the province to enact a new and comprehensive "Open Meetings" law. If they're not prepared to do so, such talk may be little more than political rhetoric.

Make privacy a priority

CONTINUED FROM PAGE 1

- violations of privacy laws;
- harm to customers whose personal information is used or disclosed inappropriately;
- damage to the organization's reputation and brand;
- financial losses associated with deterioration in the quality and integrity of personal information;
- financial losses due to a loss of business or the failure or delay in the implementation of a new product or service due to privacy concerns; and
- loss of market share or a drop in stock prices following negative publicity about a "privacy hit."

The paper explains what fair information practices are (internationally recognized privacy principles), outlines the business case for implementing sound privacy practices and suggests key steps that directors should take. The paper concludes with a series of questions that can be used to help determine if a company has fully addressed privacy compliance.

"I have found a surprising lack of awareness that the fiduciary duties of directors extend beyond governance and financial auditing issues to include privacy protection," adds the Commissioner. "This paper should serve as a good starting point for these organizations and individuals."

The paper is available on the IPC Web site at www.ipc.on.ca.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order MO-1684
Appeal MA-020208-2
City of Toronto

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information pertaining to the development of a property at the corner of Spadina Road and Thelma Avenue, owned by the Toronto Parking Authority (TPA), an agency of the City.

The City identified a large number of responsive records and notified several parties whose interests might be affected by the disclosure of the records. The City then granted access to some records and denied access to others based on a number of exemptions, including section 10, the third party commercial information exemption, and section 11, the exemption under which records can be withheld if disclosure might reasonably be expected to be injurious to the economic and other interests of an institution. The appellant appealed the decision.

One of the issues that the adjudicator addressed in this order was whether the content of a draft agreement can satisfy the definition of "supplied" as required by the test that must be met for the section 10 exemption to apply.

Previous orders have discussed whether the content of a draft agreement can be seen to have been "supplied" to the City by an affected party and have concluded, in general, that for such information to have been supplied to an institution, it must be clear that the information originated from the affected party. Since the information in an agreement is typically the product of a negotiation process between the institution and the affected party, that information will not qualify as originally having been "supplied" for the purposes of the third party commercial information exemption claim.

The adjudicator concluded that the drafts exchanged between the parties and the related correspondence did not satisfy the "supplied' component of the section 10(1) test. In the circumstances of this appeal, the adjudicator found that the records at issue reflected the considerable "give and take" of an ongoing process of negotiating the development agreements that took place over the course of a number of years and neither the original draft text nor the proposed changes could be attributed to either party with any certainty.

In this order, the adjudicator also addressed whether development proposals might properly be withheld under the section 11(d) exemption, applicable when the disclosure of the information could reasonably be expected to be injurious to the financial interests of an institution.

The City argued that in previous orders, conditional purchase and sale agreements for government property were found to fall under the section 11(d) exemption on the basis that if the deal fell through, by disclosing the conditional agreement the government entity would be prejudiced in negotiations with new purchasers.

The adjudicator distinguished the records and circumstances of this appeal from those previous orders and found that unlike the sale of specific property, development proposals are generally unique to the particular developer. In the adjudicator's view, the difference lies in the fact that if negotiations surrounding a conditional purchase and sale agreement fall through, the government entity may still attempt to sell the parcel of land on the same terms; on the other hand, following the failure of negotiations of a development proposal, any new development proposal could vary significantly from the particular development negotiated with the affected party. The adjudicator concluded that these circumstances

significantly reduced the likelihood of harm under section 11(d) as the disclosure of such records would have limited, if any, relevance to any subsequent negotiation process and ordered the records to be released to the appellant.

Order PO-2128
Appeal PA-020162-1
Management Board Secretariat

The Ministry of the Attorney General received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the legal costs incurred by both the Government of Ontario and by the government's insurer for the defence of government officials in the civil lawsuit brought by the family of the individual killed during the occupation at Ipperwash Provincial Park.

The Ministry advised the requester that Management Board Secretariat (MBS) had custody and control of the requested records and that the request had therefore been transferred to MBS. MBS identified one responsive record and denied access to it based on two exemptions.

One of the key issues the adjudicator addressed in this order was the argument made by MBS that the solicitor-client privilege exemption outlined in section 19 of the *Act* applied to the record because it contained information about legal accounts.

Previous orders involving legal accounts applied the Federal Court of Appeal reasoning in *Stevens* v. *Canada (Privy Council)*(1998), 161 D.L.R. (4th) 85 and found that unless an exception applies, lawyers' bills of account, in their entirety are subject to solicitor-client privilege at common law. One of the exceptions outlined by the Court in *Stevens* specifies that information which is not a communication but is a mere statement of fact is not privileged. Relying on that exception, some of those previous orders have found that privilege does not apply to total dollar amounts for legal costs.

However, a more recent decision involving the application of solicitor-client privilege to legal accounts, *R.* v. *Charron* (2001), 161 C.C.C. (3d) 64 (Que. C.A.), leave to appeal granted [2001] C.S.C.R. no.615 (S.C.C.), also known as *Maranda*, has emerged. In that decision, the Quebec Court of Appeal found that the fact of payment is not inherently a solicitor-client communication and that this "fact" does not, on its own, reveal confidential information arising from the solicitor-client relationship. In the Court's view, barring unusual circumstances, disclosing the amount paid to a lawyer would not undermine the purpose of solicitor-client communication privilege by creating a chilling effect on solicitor-client communications.

In reviewing the specifics of this case, the adjudicator found that the information contained in the record at issue in this appeal, an aggregate amount paid by an insurer for various legal services, more closely paralleled the information at issue in *Maranda* than that in *Stevens* and therefore chose to apply the reasoning set out by the Court in *Maranda*. The adjudicator concluded that in the circumstances of this appeal it is difficult, if not impossible, to infer from the figure itself, information about the "nature of the retainer" or other particulars of the relationship between the various government defendants and their counsel. Given that he was not persuaded that any meaningful information about the solicitor-client relationship could be inferred from the total cost figure, he found that it did not attract solicitor-client communication privilege and ordered MBS to disclose the total cost figure to the appellant.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Both parties committed to mediation

The Hamilton Entertainment and Convention Facilities Inc. (HECFI) received four access requests from a member of the media. The requests were for records relating to:

- HECFI's business with a number of named entities;
- the names of consultants, advisors and temporary personnel, along with their responsibilities, fees and purposes for which they were retained, and any reports they produced;
- expenses claimed by the Board of Directors Chairs and Vice Chairs for a specified time period; and
- expenses claimed by HECFI's Managing Director/CEO for a specified time period.

In response to all four requests, HECFI applied section 12 (solicitor-client privilege) of the *Municipal Freedom of Information and Protection of Privacy Act* to deny access to the records in their entirety.

During mediation, HECFI's Freedom of Information Co-ordinator (the Co-ordinator) worked closely with the mediator and the appellant to effect a mutually satisfactory resolution of the appeals:

- HECFI identified those named entities for which they had records and notified them of the request. The named entities consented to the disclosure of their records to the appellant.
- The appellant met with representatives of HECFI and narrowed the scope of the request to those consultants, advisors and temporary personnel that had submitted invoices amounting to $5,000 or more annually. HECFI provided the requester with a list reflecting the narrowed request.
- HECFI revised its decision and granted the appellant access to the expense claim records of the Chairs, Vice Chairs and Managing Director/CEO.

As a result, all four appeals were resolved during mediation. The positive approach to mediation exhibited by *both* the Co-ordinator and the appellant led to a resolution to the satisfaction of all concerned.

Mediation addresses appellant's real interest

After a child made an allegation to his teacher that one of his parent's had hit him, the school contacted the local Children's Aid Society (the CAS) and the local Police Service. Both agencies investigated the allegation by conducting interviews at the school and with both parents.

The other parent then made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the local Police Service for a copy of the police investigation report. The Police granted partial access to the records, severing the name of the CAS worker. The parent appealed the Police's decision.

During the mediation process, it became apparent that the appellant knew the name of the CAS worker, in fact, had met with the worker, and therefore wasn't interested in pursuing access to the severances. The appellant's real concern was that, in the appellant's view, the police investigation report did not accurately reflect the appellant's and the family's interview.

Once the mediator determined the appellant's real interest, the Police's Freedom of Information and Protection of Privacy Co-ordinator agreed to provide the mediator with the name of a police official with whom the appellant could discuss the accuracy of the reports. Once the meeting was arranged, the appellant agreed that the appeal was resolved.

Building trust for ongoing relationship

A requester submitted four requests under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Transportation for access to records relating to the proposed construction of a highway extension in southwestern Ontario. The Ministry issued fee estimates, and upon receipt of 50% of the fee from the requester, granted access to the records.

The requester appealed the fee and also raised a number of issues relating to the records to which she had been granted access. Specifically: a number of records she received either were not responsive to the request or were records she had specifically excluded from the request; yet these non-responsive records had been included in the calculation of the photocopying fees; one disc provided by the Ministry could not be opened; and a promised disc had not been provided.

The Ministry took a comprehensive approach with a view to resolving all four appeals. Despite the fact that the Ministry's actual search time for the four appeals was greater than their estimate, they nonetheless wanted to address the appellant's various issues. They offered the appellant assistance in opening the disc and offered to reduce by 50% the outstanding balance on three appeals.

The appellant accepted the Ministry's offer and the four appeals were settled. Both parties agreed that the discussions and negotiations undertaken in the course of mediation had helped them build a relationship of trust which should serve them well in future dealings.

Third party appellant and requester participate in teleconference and resolve appeal

The Ministry of the Environment (the Ministry) received a three-part request under the *Freedom of Information and Protection of Privacy Act* for information relating to site assessments of a specified property. Parts one and three of the request were for certain Environmental Site Assessment reports and part two of the request was for the Preliminary Site Assessment report.

The Ministry granted access to one Environmental Site Assessment report but advised that it could not locate the other report. The Ministry also granted access to the Preliminary Site Assessment report (the preliminary report), despite objections by the affected party.

The affected party (now the appellant) appealed the Ministry's decision to grant access to the preliminary report, claiming section 17 (third party information).

During mediation, the Mediator contacted the appellant to discuss the application of section 17 to the record. The mediator referred the appellant to specific orders in which records similar to the record at issue in this appeal had been ordered disclosed in full.

The appellant believed that the circumstances in his case could be distinguished because of ongoing litigation. Further, he believed it would be "misleading" to disclose the preliminary report to the requester. However, upon understanding that the requester had already obtained access to the remediation records, the appellant agreed to discuss his objections directly with the requester.

The Mediator arranged a teleconference between the two parties and herself. During the teleconference the requester explained that she wanted access to the preliminary report to verify that all of the matters raised in the report had been addressed. The appellant gave his view that since the report was only a preliminary assessment it could not be used to verify that all contamination matters had been addressed. The requester indicated that she understood his view. The parties then had some discussion about their litigation.

In the end, because the requester already had the remediation records and, based on their discussions and understandings about the preliminary nature of the report, the appellant decided to consent to the disclosure of the preliminary report and the appeal was resolved.

Recent IPC publications

The IPC has issued (in order of publication) the following publications and submissions since the last edition of *IPC Perspectives*:

Business Improvement Project: How to Assist in Increasing Compliance with the Freedom of Information and Protection of Privacy Act is a joint project of the IPC and the Ministry of Health and Long-Term Care, Freedom of Information and Protection of Privacy Office. April 2003.

What to do if a privacy breach occurs: Guidelines for government organizations is aimed at government organizations but the guidelines can be used by all organizations. May 2003.

National Security in a Post-9/11 World: The Rise of Surveillance ... the Demise of Privacy? provides an introduction to the main anti-terrorist initiatives to outline the factors governments should consider to ensure surveillance technologies and other national security systems are implemented in a manner that minimizes the impact on privacy. May 2003.

2002 Annual Report. June 2003.

The State of Privacy and Data Protection in Canada, the European Union, Japan and Australia outlines some of the global developments in the privacy arena. June 2003.

Inspection Reports and the Municipal Freedom of Information and Protection of Privacy Act is a joint project of the Town of Newmarket and the IPC. June 2003.

A Guide to Ontario Legislation Covering the Release of Students' Personal Information provides students, parents and school board staff with a basic understanding of how the *Municipal Freedom of Information and Protection of Privacy Act* interacts with the *Education Act* to protect privacy and provide access to the personal information of students. Revised July 2003.

Electronic Records and Document Management Systems: A New Tool for Enhancing the Public's Right to Access Government-Held Information? examines the role of electronic records and document management systems (ERDMSs) in enhancing the public's right to access information from government institutions. July 2003.

The Security-Privacy Paradox: Issues, Misconceptions, and Strategies is a joint paper with hands-on advice for developing strategies for information security and privacy protection. August 2003.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Upcoming presentations

December 4. **Commissioner Ann Cavoukian** will be the keynote presenter at the International Association of Business Communicators' Privacy & Business Luncheon in Toronto.

February 11. **Commissioner Ann Cavoukian** will give a keynote address on biometrics at the government of B.C.'s annual Privacy & Security Conference in Victoria, B.C.

February 23. **Commissioner Ann Cavoukian** will speak on privacy matters to the University of Toronto's Centre for Innovation Law and Policy in Toronto.

April 28. **Commissioner Ann Cavoukian** will address the Canadian Automobile Association (manufactures and retailers) on privacy issues in Toronto.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian re-appointed for a second term

Dr. Ann Cavoukian has been re-appointed as Ontario's Information and Privacy Commissioner (IPC). This is the first time an IPC Commissioner has been asked to take on a full second term.

"I am honoured that I was asked to continue on as Commissioner," says Dr. Cavoukian. "We are in the midst of dramatic and profound change in the areas of privacy protection and access to government information. I appreciate the confidence that the legislature has in me to oversee these evolving areas."

Dr. Cavoukian expects that public scrutiny of privacy and access issues will grow increasing more intense over the term of her new five-year re-appointment. "In the last few years, concern over the impact of technology on the management and protection of personal privacy has grown significantly. With technological advances coming virtually on a daily basis, the complexity of the issues is also growing.

"We made great strides over my first term in addressing the risks and issues. More importantly, we worked closely with Ontario citizens, businesses and governments to ensure privacy was a given, not an afterthought. This work must continue on an on-going basis."

In the near term, the Commissioner is committed to helping ensure the smooth transition of Bill 31, the proposed *Ontario Health Information Protection Act*, across the health care sector in the province. "The implementation of this Act must be seen as a "win-win" situation for both

Commissioner Ann Cavoukian.

patients and health-care practitioners alike," adds the Commissioner. "Privacy cannot win if it comes at the expense of effective health care. It is my goal to work with as many organizations and institutions as possible to build practical responses to the Act that do not disrupt the system."

On the freedom of information (FOI) side, the Commissioner notes while there has been a strong increase in the responsiveness of government organizations in meeting FOI requests over the last five years, much work remains. Creating a culture of openness and transparency within government is one of her key objectives.

CONTINUED ON PAGE 8

this issue:

Recent IPC publications

The following publications and submissions, which are available on the IPC Web site, have been issued since the last edition of *IPC Perspectives*:

Fees, Fee Estimates and Fee Waivers for requests under the Freedom of Information and Protection of Privacy Act *and the* Municipal Freedom of Information and Protection of Privacy Act *Guidelines for Government Institutions.* A reference tool to assist government institutions determine what, when and how to claim and calculate fees. October 2003.

Making Municipal Government More Accountable: The Need for an Open Meetings Law in Ontario. A call for legislation to make municipalities more open and transparent. October 2003.

Statement to the House of Commons Standing Committee on Citizenship and Immigration Regarding Privacy Implications of a National Identity Card and Biometric Technology. Commissioner Ann Cavoukian. November 4, 2003.

Privacy and Boards of Directors: What You Don't Know Can *Hurt You.* Highlights privacy as a business issue. November 2003.

Guidelines for Using Video Surveillance Cameras in Schools. To assist school boards ensure stringent privacy controls when introducing video surveillance programs. December 2003.

Submission to the Standing Committee on General Government: Bill 31: Health Information Protection Act. Commissioner Cavoukian. January 27, 2004.

Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology. A tool to help the public understand RFIDs, focus attention on privacy and advance privacy principles needed by businesses during the design and use of this technology. February 2004.

Best Practices for Institutions in Mediating Appeals under the Freedom of Information and Protection of Privacy Act *and the* Municipal Freedom of Information and Protection of Privacy Act. A joint project of the IPC and the Ministry of the Attorney General. March 2004.

The Advantages of Electronically Processing Freedom of Information Requests: The MNR Experience. Produced by the Ministry of Natural Resources and the IPC. April 2004.

Incorporating Privacy into Marketing and Customer Relationship Management. A joint paper with the Canadian Marketing Association. May 2004.

Upcoming presentations

June 2. Commissioner Ann Cavoukian will give a keynote address on the Security–Privacy Paradox at the Infosecurity Canada Conference – Toronto.

June 8. Director of Policy Brian Beamish will speak on the IPC's role as the oversight body under Bill 31, the proposed *Personal Health Information Act* at an Ontario Hospital Association seminar – Ottawa.

June 9. Commissioner Ann Cavoukian will give a presentation entitled *The Privacy Imperative: Go Beyond Compliance to Competitive Advantage*, at the annual International Association of Business Communicators (IABC) 2004 International Conference – Los Angeles, California.

June 10. Commissioner Ann Cavoukian will speak at the IAPP TRUSTe Symposium *Privacy Futures* – San Francisco, California.

June 17. Commissioner Ann Cavoukian will present a keynote address to the Canadian Institute's *Meeting Your Obligations for Privacy Compliance: How to Comply with Canada's Changing Privacy Regime* conference regarding the proposed *Personal Health Information Protection Act* and the role of her office – Toronto.

July 29. Assistant Commissioner (Privacy) Ken Anderson will give a keynote address on privacy issues at the Information Management in the Public Sector Conference – Ottawa.

IPC employee wins Ombudsman award

Rookie Intake Analyst Lucy Costa may be new to the job, but since she stepped up to the plate last October, she has clearly demonstrated that she has the right stuff. In February Lucy was notified she won the Ombudsman Ontario Public Service Recognition Award for her work as a Client Services Associate at the Family Responsibility Office (FRO) of the Ministry of Community and Social Services.

She was selected by a committee chaired by Ontario Ombudsman Clare Lewis. When Lucy picked up her award on February 26, she was proudly accompanied by IPC Commissioner Ann Cavoukian and Assistant Commissioner (Access), Tom Mitchinson. "I was really pleased with the reaction I got here from (IPC Registrar) Robert Binstock, Tom and Ann," she says, "and the support Ann and Tom provided by going with me to the Awards Presentation made me feel honoured."

Clare Lewis, Ann Cavoukian, Lucy Costa and Tom Mitchinson.

When informed about winning for the quality of public service she provides to effectively resolve complaints, she says she was in total shock. First notified by a phone call coming out of the blue, she says she only remembers hearing the word "nominated," not thinking she had actually won. She didn't realize she won until she got her congratulatory letter. "I was so thrilled to be recognized. I do try to go above and beyond, and it feels wonderful to be recognized for that."

When working at FRO, Lucy always tried to put herself in the client's shoes. "What if I were on the other end of the situation?" she wonders. "I always treated clients the way I would want to be treated myself, and that included providing explanations that I would expect as a client."

At her former job at FRO (she is currently on a one-year secondment to the IPC) Lucy was a contact for eight Ombudsman representatives for whom she exclusively resolved clients' complaints. One of the key criteria for the award was the delivery of exceptional responsiveness and co-operative service during the complaint resolution process – something in which Lucy excels.

At FRO, issues involved "life-altering situations, as clients depended on getting money to eat and pay their bills." The skills Lucy applied in her former position have been transported to her current role as Intake Analyst at the IPC. "I try to show empathy for my clients. I do my best to be thorough and ensure I cover all the issues an individual has and address all of their concerns. This job is so different, but I brought with me a lot of analytical and customer service skills.

I use a forensic analysis approach to break everything down, to do a forensic review of each file." She sees the most important qualities for doing her job as "providing excellence in customer service, developing good working relationships and being an expert in what you're doing."

Her current goal is to educate herself about the whole IPC organization, and where her particular role fits into the big picture. "I always need to see the whole picture so my role can be put in proper context."

With her positive attitude, high motivation and demonstrated abilities, Lucy is bound to make a big difference at the IPC. In baseball metaphor, she promises to be a real "slugger."

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Appellant's interests addressed although institution's access decision remains unchanged

The City of Toronto (the City) received a request for access to an Incident Report under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The Incident Report related to a fire at a local grocery store, which was responded to by City of Toronto fire service personnel. As a result of the fire, the requester sustained injuries and retained counsel.

The City granted partial access to the Incident Report and denied access to the remainder pursuant to section 14(1) of the *Act*. In particular, all references to the identification numbers of City employees were severed from the record. The requester's counsel (now the appellant's counsel) appealed the denial of access.

In discussions with the mediator, the appellant's counsel advised that he required the City employees identification numbers should he need to contact them in the future. He explained that in a city the size of Toronto, a person's name alone might not be sufficient for identification as many people have the same name. Accordingly, he anticipated that he might have difficulty issuing subpoenas or contacting the City employees for litigation purposes.

The City advised the mediator that though some City employees are assigned badge numbers, the severed identification numbers in this instance were internal personnel numbers. Accordingly, the City maintained their position that disclosure of the identification numbers would constitute an unjustified invasion of privacy.

However, in an effort to address the appellant's counsel's concerns, the City outlined the proper procedure the appellant's counsel should follow to contact the City employees named in the record. In that regard, the City provided the name, address and telephone number of the employee who would be responsible for handling such a request.

Though the appellant did not gain access to the remainder of the record, the appellant's counsel advised that he no longer was interested in pursuing the appeal as the additional information provided in the mediation process had addressed his concern.

Providing explanations leads to resolution

The Niagara Regional Police (the Police) received a request for an arrest report from an individual who had been charged with two offences. The Police granted access to the arrest report but denied access to two entries (confidential police codes) citing section 8(1) of the *Act*.

The requester appealed the Police's decision. It became clear during discussions with the mediator that the key issue for the appellant was not the denial of access to the police codes, but rather to have the reference to one charge in particular removed from the arrest report and/or to have the report destroyed.

The appellant argued that although the Police had charged him, at court he received a conditional discharge on one count and the other count was dropped. The appellant felt that his reputation and work prospects were affected since the charge that had been dropped was still showing on the arrest report.

During mediation, the mediator clarified with the Police the status of the appellant's records and their record retention schedule. The Police advised that the appellant's record is scheduled for shredding at the end of the year.

The mediator relayed the record retention information to the appellant, along with additional explanatory information provided by the police. The appellant understood that, in the circumstances of this case, the record retention schedule was not an appealable issue. Finally, in recognition of his real interest, the mediator provided the appellant with information about section 36(2) of the *Act* (the right to request correction) so that he could consider whether it might be applicable to his situation. The appellant was satisfied with the information provided by the Police and the mediator, and considered his appeal resolved.

Written explanation satisfies appellant's needs

Centennial College of Applied Arts and Technology (the College) received two requests from the same requester for (1) the details of the contract(s) between Centennial College and [a named foundation] regarding the Centennial College location in India and (2) the details of the operation of its facilities/location in India.

The College issued separate decision letters and denied access to the records responsive to both requests in their entirety pursuant to various subsections of section 18(1) [economic and other interests of Ontario] of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) appealed both decisions and two appeal files were opened.

The mediator contacted the College's Information and Privacy Co-ordinator to discuss the records at issue in these appeals and was advised that the agreement had still not been completed. He explained that the College is not operational in India, that the College is still negotiating the school programs, and that [the named foundation] is presently acting only as an agent to recruit students for the Centennial College campus in Canada. Accordingly, he advised that the College is continuing to rely on the exemptions cited to deny access to the records at issue in both appeals.

The mediator telephoned the appellant to provide him with this additional information. She also provided her opinion that since negotiations between the College and the foundation have not yet been completed, section 18 of the *Act* would most likely apply to exempt the information he is seeking. The appellant indicated he would be willing to settle this appeal if he received a letter from the College explaining that the campus in India is not yet operational and negotiations with [the named foundation] have not been completed.

The College accepted the appellant's proposal and provided him with a letter from its president outlining the status of its negotiations with the [named foundation]. The appellant advised that he was satisfied with the letter he received from the College and his appeals were resolved on that basis.

Having the right parties at the table leads to resolution

The Ministry of Natural Resources (the Ministry) received a request for information relating to its Special Purpose Account (SPA). Specifically, the requester sought access to "a project-by-project breakdown and the corresponding dollar amounts by district of the SPA for the last fiscal year." The Ministry issued an interim decision setting out a fee estimate of $2,250.00 for 75 hours of search time to prepare a summary responsive to the request. The requester (now the appellant) appealed the Ministry's fee estimate.

During mediation, the appellant advised the mediator that she had previously received part of the information via e-mail from two particular districts. The appellant indicated that she would be satisfied with receiving similar information for the remaining 24 districts, and pointed out that the information should be readily available. The two sample e-mails were then forwarded to the Ministry for review.

In discussions with the Ministry, the mediator was advised that the SPA has the following three main categories of funding: project funding, support dollars and salary allocation. The Ministry noted that the sample e-mails did not contain information regarding the salary allocations and that this information would require a great deal of time to compile. The appellant subsequently confirmed that she does not wish to receive information regarding salary allocations.

During mediation, the manager for the SPA project agreed to speak directly with the appellant regarding ways to retrieve the requested information in the most cost-effective manner. Through further discussions between the mediator, the Ministry's FOI staff, the appellant and the SPA manager it became evident that, rather than having to obtain the information from each district separately, all of the requested information was readily available from a database within the Fish and Wildlife Branch. Based on this, the Ministry revised its fee to be only for photocopying costs of approximately $7.00. The appellant was satisfied with the revised fee and the appeal was resolved.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-2225
Appeal PA-020089-1
Ontario Rental Housing Tribunal

The Ontario Rental Housing Tribunal (the Tribunal) is established under the *Tenant Protection Act, 1997* (the TPA) and has exclusive jurisdiction to determine applications under the TPA. During its application proceedings, the Tribunal may require parties to pay money on account of fees, fines or costs. If an applicant owes money to the Tribunal, it may refuse to hear or discontinue their application. In order to identify individuals or corporations who owe money, the Tribunal generates two reports: The Accounts Receivable Report and the Outstanding Debt List.

The Tribunal received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information in the Accounts Receivable Reports and Outstanding Debt Lists. Specifically, the requester asked for the names and contact information of all applicants who owed money to the Tribunal, as well as the amounts owing.

The Tribunal relied on section 21, the invasion of personal privacy exemption, to deny access to the records.

During mediation, the information sought was narrowed so that the only information remaining at issue in adjudication was that related to non-corporate landlords. The key issue that the adjudicator addressed in the order was whether information about non-corporate landlords, specifically their names and the fact that they have outstanding financial obligations to the Tribunal, constitutes personal information as defined by the *Act*.

Previous orders have established a distinction between personal information and information that may relate to an individual in a business context. These orders have found that if the information is about an individual acting in a business capacity it does not fall within the scope of personal information.

In making his finding, the adjudicator posed two questions. First he asked: In what context do the names of the individuals appear? The adjudicator stated that when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena having made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate.

The adjudicator went on to explain that income and expenses incurred by a landlord are accounted for under the *Income Tax Act* and the time, effort and resources invested by an individual in this context fall within the scope of profit-motivated business activity. While he acknowledged that in some cases a landlord's business is no more sophisticated than an individual homeowner renting out residential space, he found that, fundamentally, both a homeowner and a large corporate owner of a number of apartment buildings can be said to be operating in the same "business arena," albeit on a different scale.

Second, the adjudicator asked: Is there something about the information at issue, even if it appears in a business context that, if disclosed, would reveal something personal about the individual? The adjudicator stated that disclosing the information would reveal that the individual: 1) is a landlord; 2) has been required by the Tribunal to pay money in respect of a fine, fee or costs; 3) has not paid the full amount owing to the Tribunal; and, 4) may be precluded from proceeding with an application under the TPA. The adjudicator found that there was nothing present in that information that would allow it to "cross over" from the business realm to the personal information realm.

Accordingly, the adjudicator concluded that the information about non-corporate landlords at issue in this appeal is "about" those individuals in a business rather than personal capacity and does not qualify as personal information as that term is defined by the *Act*.

Orders MO-1705 and MO-1706
Appeals MA-010348-2 and MA-020152-2
York Region and Peel District School Boards

The York Region District School Board (the York Board) and the Peel District School Board (the Peel Board) received requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the same appellant requesting information about cold beverage vending agreements entered into by the boards with soft drink companies.

In the York Board case, the record at issue was the successful company's proposal in response to the Board's request for proposal. The Board accepted the company's proposal but there was not, initially, a written agreement between the company and the Board.

The adjudicator found that the terms of the proposal formed the terms of an oral agreement between the company and the Board. In the Peel Board case, the records at issue were a proposal and a written agreement between the successful company and the Board.

These two orders address the interpretation of sections 10(1) (third party information) and 11(c) and (d) (economic interests of the institution). In both cases, the adjudicator found that these sections did not apply and ordered the release of the records in their entirety. The decisions are significant for a few reasons.

First, the adjudicator examines the "supplied" element of the three-part test under section 10(1) in the context of the negotiation of contractual terms. In both cases, he reinforces the IPC's stance that contractual terms that are proposed by a third party and agreed to cannot be considered to have been supplied.

Second, in his examination of the "harms" test, the adjudicator placed a lot of weight on the U.S. approach to similar cold beverage vending arrangements and a recent decision of the Information and Privacy Commissioner for British Columbia (Order 01-20). The adjudicator found no evidence that prospective bidders were deterred from sharing information in their proposals or that they had been prejudiced in any way as a result of sharing this information with competitors. In both appeals, the adjudicator found that the two companies and the Boards did not present detailed and convincing evidence of harms under section 10(1). He applied the same basic reasoning in his analysis of section 11.

Third, in the Peel Board case, the Board raised an issue regarding the standard of review of an institution's decision. The Board argued that the IPC was required to show deference to the Board's decision to apply the section 10 and 11 exemptions and that the adjudicator should reverse the Board's decision only if it is "unreasonable." The adjudicator dismissed the Board's argument and indicated that the appropriate standard of review is "correctness" and that the IPC is not required to show deference to the Board's decision.

IPC on the move

After spending the first 17 years of its existence located at 80 Bloor Street West, the IPC will pack up and move to a new home this June. "Our lease expires this summer," notes IPC Commissioner, Ann Cavoukian. "So last fall, we began exploring our options both at our current location and at other sites. We discovered there was a great deal of competition from landlords for our business and we were able to secure a far better deal at the new location."

The move is scheduled to take place over the weekend of June 5. Janet Geisberger, who is managing the move, advises the office will be open for business as usual on June 7.

As of June 7, the IPC's new address will be:

2 Bloor Street East
Suite 1400
Toronto, Ontario
M4W 1A8

Telephone numbers will not change. The IPC has changed the format for its e-mail addresses. The format is full first name followed by a dot then full last name @ipc.on.ca. For example, Janet's e-mail is now janet.geisberger@ipc.on.ca. The IPC's mail server will continue to accept the old format for a short transition period.

Much needed health privacy law to protect sensitive personal information

The introduction of the proposed *Health Information Protection Act* by the provincial government will play a critical role in helping keep the health information of Ontarians from the eyes of people who have no need to see it, says Commissioner Ann Cavoukian.

"I applaud the new government for quickly introducing health information privacy legislation. No personal information is more sensitive and in need of greater protection than health information. This bill will provide a comprehensive set of privacy protections, specifically for the health sector in Ontario."

There have been a number of high profile health privacy breaches in recent years. The Commissioner hopes this legislation will ensure that all organizations dealing with personal health records will institute strong policies and procedures to protect privacy. "Given the sensitivity of this information, unauthorized access can be devastating – especially to someone already dealing with a major health issue. It is critical that there are specific limitations on how this information is handled."

While protecting privacy, the bill will also ensure that personal health information will continue to be readily available to a patient's health care team. It is the Commissioner's hope that the implementation of consistent privacy rules across the health sector will encourage greater public trust, and help to pave the way for much needed integration in the delivery of health care and the adoption of new technologies, such as electronic health records.

The Commissioner addressed the legislative committee reviewing the proposed Act earlier this year and emphasized the need to get moving. "Members of the public, health-care providers and other stakeholders have been waiting for the introduction of this legislation since Justice Horace Krever's *Report of the Royal Commission on the Confidentiality of Health Information* in 1980 – 24 years ago," she stated.

Following the committee meetings, a number of changes have been made to the legislation. This includes dropping the requirement for the Commissioner to acquire a warrant to conduct full investigations into privacy complaints. "No other jurisdiction in Canada – or any other Commissioner – is subject to this kind requirement," notes the Commissioner. "It was in the best interests of Ontarians' privacy that this clause was removed."

The bill received Second Reading at Queen's Park on April 8, 2004. It is scheduled to be considered by the Standing Committee on General Government prior to Third Reading. The new law is set to come into effect on November 1, 2004.

Cavoukian re-appointed

CONTINUED FROM PAGE 1

"As we have seen across all levels of government, the public holds dear its freedom of information rights. Ontario citizens won't tolerate a government that lacks integrity and transparency in its operations. I urge the Ontario government to send a clear signal to the citizens of this province that it is committed to the FOI process. I will seek a real culture shift to greater openness in the way our governments operate."

Dr. Cavoukian was first appointed Commissioner in 1997 following a lengthy and exhaustive competition. She is the third person to hold the post since Ontario enacted a freedom of information and protection of privacy law in 1987.

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ANN CAVOUKIAN, PH.D., COMMISSIONER

New health privacy *Act* takes effect Nov. 1

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Commissioner Ann Cavoukian and Health Minister George Smitherman with several of the IPC's new publications on PHIPA.

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"This will help protect the most sensitive of all personal information," said Information and Privacy Commissioner Ann Cavoukian, who stressed how pleased she was "that the new government has moved forward so quickly with this much-needed legislation. This is something my office has been advocating for, and working towards, virtually since the office opened in 1987."

PHIPA will apply to all individuals and organizations involved in the delivery of health care services. There are also restrictions on the use or disclosure of personal health information given to outside agencies, such as insurance companies or employers, by a health information custodian.

Under the new legislation, health information custodians will be required to implement information practices that are *PHIPA* compliant. For example, custodians must take reasonable steps to safeguard and protect personal health information and ensure that medical records are retained, stored, transferred and disposed of in a safe and secure manner.

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In discussions with the mediator, the appellant explained that he was not aware of the ongoing law enforcement matter and that he was not seeking access to any reports concerning law enforcement issues. The appellant indicated that his request for access to the operational report stemmed from his interest in policies and procedures relating to labour relations issues. In addition, the appellant clarified that he was not interested in obtaining access to information about employment or educational history of the authors of the report.

The mediator discussed the records with the ministry and noted that although the report mentioned the ongoing police matter, it did not provide any details of the police investigation. The ministry contacted the police service that was conducting the investigation and the police service confirmed that in fact, the report was not being used as part of its ongoing investigation and that it had no objection to releasing the report.

As a result, the ministry reviewed its decision on access and agreed to disclose the report with the exception of the part containing the education and employment background of the authors. The appellant was satisfied with the outcome and the appeal was resolved.

Compromise results in resolution of fee appeal

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In response, the region issued a fee estimate totalling $580. The estimate consisted of search time of 16 hours at $30 an hour; preparation time of three hours at $30 an hour and the photocopying of 50 pages at 20 cents a page. The region requested a written acceptance of the fee and a deposit equalling 50 per cent of the total.

The requester asked the region to waive the fees based on his view that disclosure of the records would benefit public health and safety. The region declined to waive the fees.

The requester (now the appellant) appealed the region's fee estimate and its decision not to waive the fees.

During the course of mediation, after the mediator clarified the elements of the request with the appellant, the region provided the appellant with three options, offering variations in the processing of his request with corresponding fees for each option. The appellant was not satisfied and wished to pursue the appeal.

In an effort to resolve this appeal, the region subsequently offered a fourth option in which all information for the three communities mentioned in the request would be identified, no preparation charges would apply and the region would not charge for photocopying over 700 pages of records. The fee would total $250.

The appellant was pleased with the region's open approach and reasonable offer. He accepted the fourth option and the appeal was resolved.

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It's been a year to remember for IPC's senior health privacy specialist

It has been one of the most eventful years in Debra Grant's professional life.

Senior health privacy specialist with the Information and Privacy Commissioner/Ontario (IPC), Grant was the lead researcher as the IPC prepared its submission re Ontario's proposed personal health privacy legislation. A wide array of IPC recommendations were incorporated into the final version of the *Personal Health Information Protection Act (PHIPA)*, which comes into force Nov. 1.

bra Grant (right) with Commissioner Ann Cavoukian and Assistant Commissioner Ken Anderson.

At the same time, Grant was serving on the special privacy advisory committee created by the Canadian Institutes of Health Research (CIHR) to advise on the development of *Guidelines for Protecting Privacy and Confidentiality in the Design, Conduct and Evaluation of Health Research*. A draft version of the *Guidelines* was released earlier this year by the CIHR for public comment.

Grant, who joined the IPC in 1991 as a research officer shortly before completing a Ph.D. in social psychology at York University, has conducted research and helped develop policies on a wide range of access and privacy issues. She also provides detailed statistical analysis for the IPC's annual report.

"Her work has been invaluable to the IPC," says Commissioner Ann Cavoukian.

For the past decade, Grant has focused increasingly on personal health information privacy.

"These are very challenging times for everyone who specializes in health privacy issues – with reform in the delivery of primary care, the implementation of electronic health records, and the pressure on the government to make more effective use of personal health information for planning and managing our publicly funded health care system," said Grant. "The privacy issues that must be addressed are both complex and numerous."

But she welcomes the challenge. "I honestly enjoy dealing with these issues – they are real issues, things that can make a difference in people's lives."

Ontario's new health privacy legislation may appear to be extremely complicated, she said, "but this is understandable if you consider the complexity of the issues that the legislation must address." She believes *PHIPA* sets a new standard for privacy in the health sector that will not only have a long-term impact on how personal health information is collected, used and disclosed in Ontario, but elsewhere as well.

The CIHR *Guidelines* are also a major step forward, said Grant. "They will become the standard that anyone doing research using health information will follow."

A significant amount of health research is based at universities, while research into areas with commercial potential, such as the development of new drugs and medical devices, is also conducted by private companies. And, government and affiliated research or statistical agencies conduct research on such subjects as emerging public health issues and the effectiveness of the health care system. The *Guidelines* cover these and other aspects of health research.

PHIPA covers many more elements of personal health information privacy than research, but there is a direct tie-in between *PHIPA* and the *Guidelines*, said Grant. "*PHIPA* and health privacy laws in several other provinces provide a framework in terms of legal requirements. When it comes to research, the *Guidelines* will provide more detailed guidance."

Anyone seeking more information about the draft *Guidelines* can visit: http://www.cihr-irsc.gc.ca/e/22085.html.

IPC'S complaint process under *PHIPA*

Once the *Personal Health Information Protection Act, 2004 (PHIPA)* comes into effect Nov. 1, any person may complain to the Office of the Information and Privacy Commissioner/Ontario (IPC) if he or she has reasonable grounds to believe that another person or organization has contravened or is about to contravene *PHIPA* or its regulations.

Two types of complaints

There are two broad types of complaints under *PHIPA*. The first arises where a person has requested access to or correction of his or her personal health information, but has not received a satisfactory response. The second arises where a person believes some other aspect of *PHIPA* has been contravened, such as the provisions relating to collection, use or disclosure of personal health information.

Emphasis on informal resolution

Where possible, the IPC prefers to resolve complaints informally, through mediation or other means. If necessary, the IPC may use its broad order-making powers to resolve the issues. Mediation is always the IPC's preferred method of resolving complaints.

Access and correction complaints

In these cases, the IPC first determines whether the complaint will proceed through the formal process. For various reasons, a complaint may be dismissed at the outset, such as where it is made beyond the statutory time limit, or where the IPC believes the person complained against has already responded adequately to the complaint.

If the complaint proceeds, the IPC assigns the complaint to a mediator, who seeks to mediate a mutually agreeable settlement between the parties. If a settlement cannot be reached, the matter is sent to an adjudicator who conducts a review. During the review, the adjudicator seeks written representations from the parties and resolves the complaint by issuing a binding order. The order may require the health information custodian to disclose or correct the record, depending on the circumstances.

Depending on the nature of the issues in the complaint, the IPC may adopt a more straightforward process that could involve oral representations, such as where the sole issue is whether the health information custodian has conducted an adequate search for responsive records.

Collection, use, disclosure and other complaints

Again, the IPC first determines whether the complaint will proceed through the formal process. If so, the IPC gathers information about the circumstances of the complaint, and seeks to address any immediate concerns about possible further breaches of the statute.

The IPC then assigns the matter to a mediator who tries to effect a mutually agreeable settlement between the parties. If a settlement cannot be reached, the complaint is sent to an IPC investigator who conducts a review. During the review, the investigator seeks written representations from the parties and provides them with a draft order. The parties may then comment on the draft order and, after considering the views of the parties, the investigator resolves the complaint by issuing a final, binding order. The order may require a health care custodian to cease collecting, using or disclosing information, or to change its information practices as necessary to minimize the possibility of future contraventions of *PHIPA*.

In some cases, the Commissioner, rather than an outside party, may initiate the complaint. This may occur where, for example, the IPC learns of a possible contravention of *PHIPA* through media reports. In Commissioner-initiated complaints, the IPC conducts a review of the matter and seeks to resolve it informally. The matter may be resolved informally where, for example, the health information custodian has already taken steps to adequately address the IPC's concerns that gave rise to the complaint. If an informal resolution is not possible, the IPC will issue an order.

What is a health information custodian?

The *Personal Health Information Protection Act* applies to individuals and organizations defined as "health information custodians" involved in the delivery of health care services. Health information custodians include the following:

- health care practitioners (including doctors, nurses, audiologists and speech-language pathologists, chiropractors, chiropodists, dental professionals, dieticians, medical radiation technologists, medical laboratory technologists, massage therapists, midwives, optometrists, occupational therapists, opticians, pharmacists, physiotherapists, psychologists and respiratory therapists);
- service providers under the *Long Term Care Act;*
- community care access centres and homes for special care;
- hospitals;
- homes for the aged and nursing homes;
- pharmacies;
- medical laboratory or specimen collection centres;
- ambulance services;
- other community centres for health or mental care;
- professionals responsible for making assessments of an individual's mental capacity;
- medical officers for health and boards of health;
- the Ministry of Health and Long-Term Care;
- entities designated as a health information custodian under the regulations.

Summaries

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"confidentiality provision." In order to do so, the provision must restrict the disclosure of information. Section 13(1) does not do this. Rather, it authorizes the collection, retention, use and disclosure of information. Therefore, section 13(1) does not qualify as a "confidentiality provision," and section 67(1) of the *Act* cannot apply on the basis of section 13(1).

As regards section 10 of *Christopher's Law*, the adjudicator concluded that although it restricts access to certain information and therefore qualifies as a "confidentiality provision," it does not contain the degree of specificity necessary to bring the provision within the scope of section 67(1). The adjudicator also noted that when the *Act* came into force in 1988, confidentiality provisions in other statutes were deemed to prevail for a one-year period, after which the default position would shift and the *Act* would prevail, subject to specific exceptions. Since that time, the Legislature has taken care to ensure that whenever a provision is enacted that requires information to be kept confidential, despite a right of access to that information under the *Act*, it says so clearly, making specific reference to the *Act* or explicitly adding the provision to the section 67(2) list.

The adjudicator observed that the *Act* is not mentioned specifically in section 10, nor does it impose a specific duty in express or explicit language to refuse access to records requested by a member of the public. The adjudicator concluded that section 10 of *Christopher's Law*, when read in conjunction with section 67(1) of the *Act*, is not a confidentiality provision that "specifically provides" that it prevails over the *Act*, and therefore it does not.

The adjudicator ordered the ministry to make an access decision under the *Act*.

New health privacy *Act*

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information is lost, stolen, or accessed by an unauthorized individual or organization. As well, a contact person must be designated who is responsible for responding to access and correction requests, inquiries and complaints.

The office of the Information and Privacy Commissioner (IPC) is the independent oversight agency, charged with broad investigation, mediation and order-making powers. Complaints regarding privacy breaches by a health information custodian covered under *PHIPA* can be made to the IPC.

"Effective health information privacy legislation has to strike the right balance between allowing health care professionals to quickly pass on the information needed for patient care to another health professional, while restricting unauthorized disclosure," said Commissioner Cavoukian. "*PHIPA* does just that. While *PHIPA* builds in extensive privacy protection, it was designed not to interrupt the actual delivery of health care services."

The Commissioner stressed that one of the most important steps now is helping to ensure that all health care professionals are aware of the legislation and what is required. "I look forward to working with physicians and other health care professionals to ensure that the implementation of *PHIPA* complements the invaluable work that they perform on a daily basis. An example of the approach my office will be taking to the implementation of *PHIPA* can be summarized by the **three C's**: Consultation, Co-operation and Collaboration."

The IPC has developed extensive educational tools on *PHIPA*, including comprehensive *Frequently Asked Questions*, providing a general overview of the legislation. Other key publications include a *Guide to the Personal Health Information Protection Act*, primarily aimed at health care providers, and *The Personal Health Information Protection Act and Your Privacy*, a short brochure aimed at the general public. These can be accessed on the IPC's website, www.ipc.on.ca.

Mediation Success Stories

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Building trust goes a long way in mediation

The Quinte Conservation Authority (the authority) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all information relating to two named properties and a specified project. The requester's property was affected by flooding the previous fall.

The authority granted access to all responsive records. However, one of the documents listed in the index of records was not included in the records disclosed to the requester.

The requester (now the appellant) appealed the authority's decision, believing that additional responsive records, other than the identified missing document, existed. During the course of mediation, further searches were conducted and additional records were located and disclosed to the appellant. In addition, the authority explained that the missing document never actually existed, that the information had been provided verbally by telephone.

The appellant was satisfied with the explanation provided about the missing document, but maintained that site visit notes and measurements ought to exist. The mediator relayed as many details as possible to the authority, which was willing to conduct yet another search. The authority consistently provided regular updates to the mediator on the status of the search.

Once the appellant's concerns and questions were addressed, he recognized the authority's efforts and willingness to resolve his appeal and was satisfied with its resolution.

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If you have any comments regarding this newsletter, wish to advise of a change of address, or be added to the mailing list, contact:

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Compromise results in resolution of fee appeal

The Regional Municipality of York (the region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the sampling and analysis of well water in three named communities within the region. The time period covered by the request was from 1990 to 2000.

In response, the region issued a fee estimate totalling $580. The estimate consisted of search time of 16 hours at $30 an hour; preparation time of three hours at $30 an hour and the photocopying of 50 pages at 20 cents a page. The region requested a written acceptance of the fee and a deposit equalling 50 per cent of the total.

The requester asked the region to waive the fees based on his view that disclosure of the records would benefit public health and safety. The region declined to waive the fees.

The requester (now the appellant) appealed the region's fee estimate and its decision not to waive the fees.

During the course of mediation, after the mediator clarified the elements of the request with the appellant, the region provided the appellant with three options, offering variations in the processing of his request with corresponding fees for each option. The appellant was not satisfied and wished to pursue the appeal.

In an effort to resolve this appeal, the region subsequently offered a fourth option in which all information for the three communities mentioned in the request would be identified, no preparation charges would apply and the region would not charge for photocopying over 700 pages of records. The fee would total $250.

The appellant was pleased with the region's open approach and reasonable offer. He accepted the fourth option and the appeal was resolved.

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It's been a year to remember for IPC's senior health privacy specialist

It has been one of the most eventful years in Debra Grant's professional life.

Senior health privacy specialist with the Information and Privacy Commissioner/Ontario (IPC), Grant was the lead researcher as the IPC prepared its submission re Ontario's proposed personal health privacy legislation. A wide array of IPC recommendations were incorporated into the final version of the *Personal Health Information Protection Act (PHIPA)*, which comes into force Nov. 1.

ra Grant (right) with Commissioner Ann Cavoukian and Assistant Commissioner Ken Anderson.

At the same time, Grant was serving on the special privacy advisory committee created by the Canadian Institutes of Health Research (CIHR) to advise on the development of *Guidelines for Protecting Privacy and Confidentiality in the Design, Conduct and Evaluation of Health Research*. A draft version of the *Guidelines* was released earlier this year by the CIHR for public comment.

Grant, who joined the IPC in 1991 as a research officer shortly before completing a Ph.D. in social psychology at York University, has conducted research and helped develop policies on a wide range of access and privacy issues. She also provides detailed statistical analysis for the IPC's annual report.

"Her work has been invaluable to the IPC," says Commissioner Ann Cavoukian.

For the past decade, Grant has focused increasingly on personal health information privacy.

"These are very challenging times for everyone who specializes in health privacy issues – with reform in the delivery of primary care, the implementation of electronic health records, and the pressure on the government to make more effective use of personal health information for planning and managing our publicly funded health care system," said Grant. "The privacy issues that must be addressed are both complex and numerous."

But she welcomes the challenge. "I honestly enjoy dealing with these issues – they are real issues, things that can make a difference in people's lives."

Ontario's new health privacy legislation may appear to be extremely complicated, she said, "but this is understandable if you consider the complexity of the issues that the legislation must address." She believes *PHIPA* sets a new standard for privacy in the health sector that will not only have a long-term impact on how personal health information is collected, used and disclosed in Ontario, but elsewhere as well.

The CIHR *Guidelines* are also a major step forward, said Grant. "They will become the standard that anyone doing research using health information will follow."

A significant amount of health research is based at universities, while research into areas with commercial potential, such as the development of new drugs and medical devices, is also conducted by private companies. And, government and affiliated research or statistical agencies conduct research on such subjects as emerging public health issues and the effectiveness of the health care system. The *Guidelines* cover these and other aspects of health research.

PHIPA covers many more elements of personal health information privacy than research, but there is a direct tie-in between *PHIPA* and the *Guidelines*, said Grant. "*PHIPA* and health privacy laws in several other provinces provide a framework in terms of legal requirements. When it comes to research, the *Guidelines* will provide more detailed guidance."

Anyone seeking more information about the draft *Guidelines* can visit: http://www.cihr-irsc.gc.ca/e/22085.html.

IPC'S complaint process under *PHIPA*

Once the *Personal Health Information Protection Act, 2004 (PHIPA)* comes into effect Nov. 1, any person may complain to the Office of the Information and Privacy Commissioner/Ontario (IPC) if he or she has reasonable grounds to believe that another person or organization has contravened or is about to contravene *PHIPA* or its regulations.

Two types of complaints

There are two broad types of complaints under *PHIPA*. The first arises where a person has requested access to or correction of his or her personal health information, but has not received a satisfactory response. The second arises where a person believes some other aspect of *PHIPA* has been contravened, such as the provisions relating to collection, use or disclosure of personal health information.

Emphasis on informal resolution

Where possible, the IPC prefers to resolve complaints informally, through mediation or other means. If necessary, the IPC may use its broad order-making powers to resolve the issues. Mediation is always the IPC's preferred method of resolving complaints.

Access and correction complaints

In these cases, the IPC first determines whether the complaint will proceed through the formal process. For various reasons, a complaint may be dismissed at the outset, such as where it is made beyond the statutory time limit, or where the IPC believes the person complained against has already responded adequately to the complaint.

If the complaint proceeds, the IPC assigns the complaint to a mediator, who seeks to mediate a mutually agreeable settlement between the parties. If a settlement cannot be reached, the matter is sent to an adjudicator who conducts a review. During the review, the adjudicator seeks written representations from the parties and resolves the complaint by issuing a binding order. The order may require the health information custodian to disclose or correct the record, depending on the circumstances.

Depending on the nature of the issues in the complaint, the IPC may adopt a more straightforward process that could involve oral representations, such as where the sole issue is whether the health information custodian has conducted an adequate search for responsive records.

Collection, use, disclosure and other complaints

Again, the IPC first determines whether the complaint will proceed through the formal process. If so, the IPC gathers information about the circumstances of the complaint, and seeks to address any immediate concerns about possible further breaches of the statute.

The IPC then assigns the matter to a mediator who tries to effect a mutually agreeable settlement between the parties. If a settlement cannot be reached, the complaint is sent to an IPC investigator who conducts a review. During the review, the investigator seeks written representations from the parties and provides them with a draft order. The parties may then comment on the draft order and, after considering the views of the parties, the investigator resolves the complaint by issuing a final, binding order. The order may require a health care custodian to cease collecting, using or disclosing information, or to change its information practices as necessary to minimize the possibility of future contraventions of *PHIPA*.

In some cases, the Commissioner, rather than an outside party, may initiate the complaint. This may occur where, for example, the IPC learns of a possible contravention of *PHIPA* through media reports. In Commissioner-initiated complaints, the IPC conducts a review of the matter and seeks to resolve it informally. The matter may be resolved informally where, for example, the health information custodian has already taken steps to adequately address the IPC's concerns that gave rise to the complaint. If an informal resolution is not possible, the IPC will issue an order.

What is a health information custodian?

The *Personal Health Information Protection Act* applies to individuals and organizations defined as "health information custodians" involved in the delivery of health care services. Health information custodians include the following:

- health care practitioners (including doctors, nurses, audiologists and speech-language pathologists, chiropractors, chiropodists, dental professionals, dieticians, medical radiation technologists, medical laboratory technologists, massage therapists, midwives, optometrists, occupational therapists, opticians, pharmacists, physiotherapists, psychologists and respiratory therapists);
- service providers under the *Long Term Care Act;*
- community care access centres and homes for special care;
- hospitals;
- homes for the aged and nursing homes;
- pharmacies;
- medical laboratory or specimen collection centres;
- ambulance services;
- other community centres for health or mental care;
- professionals responsible for making assessments of an individual's mental capacity;
- medical officers for health and boards of health;
- the Ministry of Health and Long-Term Care;
- entities designated as a health information custodian under the regulations.

Summaries

CONTINUED FROM PAGE 3

"confidentiality provision." In order to do so, the provision must restrict the disclosure of information. Section 13(1) does not do this. Rather, it authorizes the collection, retention, use and disclosure of information. Therefore, section 13(1) does not qualify as a "confidentiality provision," and section 67(1) of the *Act* cannot apply on the basis of section 13(1).

As regards section 10 of *Christopher's Law*, the adjudicator concluded that although it restricts access to certain information and therefore qualifies as a "confidentiality provision," it does not contain the degree of specificity necessary to bring the provision within the scope of section 67(1). The adjudicator also noted that when the *Act* came into force in 1988, confidentiality provisions in other statutes were deemed to prevail for a one-year period, after which the default position would shift and the *Act* would prevail, subject to specific exceptions. Since that time, the Legislature has taken care to ensure that whenever a provision is enacted that requires information to be kept confidential, despite a right of access to that information under the *Act*, it says so clearly, making specific reference to the *Act* or explicitly adding the provision to the section 67(2) list.

The adjudicator observed that the *Act* is not mentioned specifically in section 10, nor does it impose a specific duty in express or explicit language to refuse access to records requested by a member of the public. The adjudicator concluded that section 10 of *Christopher's Law*, when read in conjunction with section 67(1) of the *Act*, is not a confidentiality provision that "specifically provides" that it prevails over the *Act*, and therefore it does not.

The adjudicator ordered the ministry to make an access decision under the *Act*.

New health privacy *Act*

CONTINUED FROM PAGE 1

information is lost, stolen, or accessed by an unauthorized individual or organization. As well, a contact person must be designated who is responsible for responding to access and correction requests, inquiries and complaints.

The office of the Information and Privacy Commissioner (IPC) is the independent oversight agency, charged with broad investigation, mediation and order-making powers. Complaints regarding privacy breaches by a health information custodian covered under *PHIPA* can be made to the IPC.

"Effective health information privacy legislation has to strike the right balance between allowing health care professionals to quickly pass on the information needed for patient care to another health professional, while restricting unauthorized disclosure," said Commissioner Cavoukian. "*PHIPA* does just that. While *PHIPA* builds in extensive privacy protection, it was designed not to interrupt the actual delivery of health care services."

The Commissioner stressed that one of the most important steps now is helping to ensure that all health care professionals are aware of the legislation and what is required. "I look forward to working with physicians and other health care professionals to ensure that the implementation of *PHIPA* complements the invaluable work that they perform on a daily basis. An example of the approach my office will be taking to the implementation of *PHIPA* can be summarized by the **three C's**: Consultation, Co-operation and Collaboration."

The IPC has developed extensive educational tools on *PHIPA*, including comprehensive *Frequently Asked Questions*, providing a general overview of the legislation. Other key publications include a *Guide to the Personal Health Information Protection Act*, primarily aimed at health care providers, and *The Personal Health Information Protection Act and Your Privacy*, a short brochure aimed at the general public. These can be accessed on the IPC's website, www.ipc.on.ca.

Mediation Success Stories

CONTINUED FROM PAGE 4

Building trust goes a long way in mediation

The Quinte Conservation Authority (the authority) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all information relating to two named properties and a specified project. The requester's property was affected by flooding the previous fall.

The authority granted access to all responsive records. However, one of the documents listed in the index of records was not included in the records disclosed to the requester.

The requester (now the appellant) appealed the authority's decision, believing that additional responsive records, other than the identified missing document, existed. During the course of mediation, further searches were conducted and additional records were located and disclosed to the appellant. In addition, the authority explained that the missing document never actually existed, that the information had been provided verbally by telephone.

The appellant was satisfied with the explanation provided about the missing document, but maintained that site visit notes and measurements ought to exist. The mediator relayed as many details as possible to the authority, which was willing to conduct yet another search. The authority consistently provided regular updates to the mediator on the status of the search.

Once the appellant's concerns and questions were addressed, he recognized the authority's efforts and willingness to resolve his appeal and was satisfied with its resolution.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian (second from right) with her new executive: Assistant Commissioners Ken Anderson (left) and Brian Beamish, and Janet Geisberger, Director of Corporate Services. **See story on page 3.**

Toronto Police Services Board scraps fee, tells police chief to work with IPC

One of the more compelling challenges facing police services across Ontario today is the need to balance the retention of personal information for investigative purposes against individual privacy rights.

Recently, the Toronto Police Services Board proposed a revision to its policy on the retention of photographs and fingerprints of individuals who have been charged – but not convicted – of criminal offences.

Currently, police policy dictates that all individuals who have been charged, but not convicted, of a criminal offence have a right to have their fingerprints and photographs destroyed by submitting an application to the police. There is no cost associated with this application. Under the proposed policy revisions, Toronto police would have a discretionary authority to refuse applications for destruction of such personal information for charges related to "serious" crimes (i.e., crimes involving guns, violence or sex offences). In addition, a $50 fee would be imposed for all applications for record destruction.

When the proposed policy revisions were initially unveiled last summer, Information and Privacy Commissioner Ann Cavoukian wrote a letter to the Toronto Police Services Board outlining her concerns.

The Commissioner emphasized that the proposed changes would be "contrary to commonly accepted principles underlying the presumption of innocence that exist in our criminal justice system" and that any

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this issue:

Recent IPC Publications

The IPC has issued (in order of publication) the following publications since the last edition of *IPC Perspectives*:

Your Health Information: Your Rights. The IPC and the Ministry of Health jointly produced this eight-panel brochure. October 2004.

Privacy Review: Video Surveillance Program in Peterborough. This review was launched in response to a complaint about the program. December 6, 2004.

Collection, Use, Disclosure and Other Complaints. This brochure explains that, if you feel that a health information custodian has inappropriately collected, used or disclosed your personal health information, or does not have proper information practices in place, you have a right to make a complaint to the IPC. December 2004.

Access and Correction Complaints – Personal Health Information Protection Act. This brochure explains what to do if an individual is not satisfied with the outcome of his or her request for access to or correction of personal health information, and how to file a complaint with the IPC. December 2004.

I'm Sorry, this Meeting is Closed to the Public: Why We Need Comprehensive Open Meetings Legislation in Canada. Assistant Commissioner Tom Mitchinson presented this paper at the annual conference of the Council on Governmental Ethics Laws (COGEL) in San Francisco on December 6, 2004.

Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Shared Services Bureau, Management Board Secretariat, and the Ministry of Finance. December 16, 2004.

Your health information: Your access and correction rights, is a fact sheet outlining some of your rights under the *Personal Health Information Protection Act*. January 2005.

Safeguarding Personal Health Information, is another *PHIPA* fact sheet. January 2005.

Ontario Regional Poison Information Centres and the 'Circle of Care,' is a *PHIPA* fact sheet. March 2005.

All of these publications and more are available on the IPC's website at www.ipc.on.ca.

Upcoming Presentations

June 2. Commissioner Ann Cavoukian is delivering a keynote address at the Canadian InfoSec Summit 2005 in Ottawa.

June 2. Ken Anderson, Assistant Commissioner (Privacy), is a guest speaker at the annual ethics conference sponsored by the St. Mary's Hospital ethics committee, at the Kitchener/Waterloo Sunshine Centre, Kitchener. His topic is: *Managing Health Information: PHIPA and the Role of the IPC.*

June 3. Commissioner Cavoukian is delivering the keynote address at the Fourth Workshop on *The Economics of Information Security*, at the Harvard Privacy Lecture series, Harvard University, Cambridge, MA. The title of her presentation is *The Economics of Privacy: Go Beyond Compliance to Competitive Advantage.*

June 10. Commissioner Cavoukian is speaking to the P.E.I. Association of Medical Radiation Technologies at the 63rd annual *CAMRT Conference* in Charlottetown. Her topic is *Privacy and Health Information.*

June 16 & 17. Assistant Commissioner Anderson will be leading a breakout session, *Taking the Temperature of Ontario's Health Privacy,* and participating in a Commissioners' panel at *Access & Privacy Conference 2005* in Edmonton.

Commissioner's new senior team at the IPC

By Ann Cavoukian, Ph.D.
Information and Privacy Commissioner/
Ontario

I want to bring everyone up to date on some significant changes at the senior staff level at the IPC. Among these, I have appointed two new Assistant Commissioners, one after the retirement of long-time Assistant Commissioner, Tom Mitchinson.

Among the changes are:

- The appointment of IPC veteran Ken Anderson as the Assistant Commissioner for Privacy;
- The appointment of Brian Beamish, who has been with the IPC for six years, as the Assistant Commissioner for Access; and
- The retirement, at the end of 2004, of Assistant Commissioner Tom Mitchinson, who had been with the IPC virtually since our doors first opened.

Ken Anderson, who has held senior positions with the IPC for 15 years, was the Director of Legal and Corporate Services when appointed as Assistant Commissioner for Privacy. Ken, who has also been designated as the Assistant Commissioner under the new *Personal Health Information Protection Act,* has played a vital role in ensuring the IPC is prepared to meet its responsibilities as the oversight agency under that *Act,* which came into effect Nov. 1, 2004. Under our new, streamlined structure, the director or manager of our Corporate Services, Legal and Policy departments all report to him.

Ken, who taught privacy law at the University of Ottawa for three years, earlier led the IPC's administrative tribunal division both as Director of Appeals and as Assistant Commissioner for Access. Ken began his career in litigation, quickly developing a practice in the areas of administrative law and public sector administration. He received his law degree from the University of Western Ontario, and a degree in business administration from the Ivey School at the University of Western.

Brian Beamish, who joined the IPC in 1999 as Director of Policy and Compliance, was serving as Director of Policy, Compliance and Communications – directing IPC research, policy development and communications efforts – when I appointed him as the Assistant Commissioner for Access. In his new role, Brian directs the Tribunal Services Department. The Registrar's Department, Adjudication Department and Mediation Department all report to him.

Before joining the IPC, Brian held various senior positions with the Ontario ministries of the Solicitor General, and Correctional Services. A graduate of the University of Toronto Law School, he was called to the Ontario Bar in 1982.

Brian has demonstrated his leadership qualities time and time again. He has led numerous public- and private-sector projects for the IPC, addressing issues such as the interplay between privacy and technology and a number of cross-jurisdictional initiatives, including one with the U.S. Department of Justice.

Though I have two excellent new Assistant Commissioners, we have also lost a very valuable member of the team. **Tom Mitchinson,** who retired in December as Assistant Commissioner for Access, was a key executive for the IPC since the early days of this office. A leading expert on freedom of information legislation, he helped launch our popular schools' program (including teachers' kits on access and privacy) and directed a major restructuring of the Tribunal Services Department. All of us here wish Tom all the best in his retirement.

Another recent change among senior staff was the appointment of **Janet Geisberger,** who joined the IPC in 2000 as Manager of Corporate Services, as the first Director of Corporate Services, a key position in our new structure. Janet has also been appointed to the four-person IPC executive. The Communications, IT and Administration departments all report to her.

Janet, who has an extensive background in human resources, has a Bachelor's Degree in Economics from Wilfrid Laurier University, and

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When health information custodians work for non-health custodians

When the *Personal Health Information Protection Act* (*PHIPA*) came into effect November 1, 2004, the term *health information custodian* was unleashed on an unsuspecting public.

PHIPA, the first Ontario privacy *Act* to cover any part of the private sector, covers the broad health sector. As more than health care practitioners are covered under the legislation (for example, nursing homes and long-term care facilities, community care access corporations and boards of health are also covered), another term was needed.

Health information custodians are individuals or organizations listed (because of profession or role or specific duties) in the legislation because the individual or organization has custody or control of personal health information.

The largest group of health information custodians is comprised of *health care practitioners*. The term health care practitioner is defined to mean a person who is a member of a regulated health profession, and who provides health care.

Essentially, *PHIPA* applies to institutional and individual health care providers who have custody or control over personal health information. This includes almost anyone who provides health care, such as physicians, nurses, hospitals, long-term care facilities, pharmacists and social workers. It also applies to certain other entities that have different roles in the health care system, such as the Ministry of Health.

In order to ensure compliance with *PHIPA*, it is imperative for health care providers to determine whether they are considered a health care practitioner that provides health care within the scope of *PHIPA*. In many situations, health professionals will find themselves employed as agents of a health information custodian, as in the case of a nurse who works for a hospital. In this circumstance, the hospital (organization), not the nurse (practitioner), would be considered the custodian that bears the ultimate responsibility for meeting the requirements of *PHIPA*.

In some instances, health care practitioners may find themselves employed, or acting on behalf of, entities whose primary purpose is not the provision of health care. For example, a nurse may be employed by a school or a factory, a physician may work for a professional sports team or an insurance company, or a registered massage therapist may provide services to clients at a spa. Health care practitioners who work or volunteer in such settings are considered to be health information custodians and subject to the rules of *PHIPA*, if they provide health care. In addition, if a custodian delegates responsibilities to a non-health information custodian employee, that custodian himself or itself is responsible for the non-custodian's compliance with *PHIPA*.

When it comes to health information custodians working for non-health information custodians, one of biggest causes of concern has been, and still is, an employer having access to the personal health information of its employees.

Some health information custodians may find themselves in a position where they have been asked by their employer to disclose the personal health information of a particular employee. Such requests are often for legitimate purposes – for example, accommodating a safe return to work after an injury or to determine eligibility for sick or disability leave. Here, it is important to remember that, unless authorized by law, a warrant, a collective bargaining agreement, or in other limited circumstances, a custodian must obtain the express consent of the individual when disclosing personal health information to an employer. For employers, it is important to remember that *PHIPA* limits any collection, use or disclosure of personal health information to the minimum required to meet the identified purpose of the request.

Moreover, *PHIPA* also regulates non-health information custodians that are recipients of personal health information from health information custodians. This is informally referred

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A year of change for IPC registrar

When a privacy complaint or an appeal against a decision by a government organization denying a freedom of information request is filed with the IPC, it comes to Robert Binstock's *intake* team.

Binstock, the IPC's *registrar,* has the authority to screen out privacy complaints or appeals that do not fall within the *Acts* that the IPC has oversight responsibility for, and to stream appeals and privacy complaints that do qualify to other stages in the process. He is also responsible for directing the administrative support staff of the Tribunal Services Department.

"Each file is different and presents a unique set of circumstances and challenges for myself and the intake staff," said Binstock.

IPC Registrar Robert Binstock

But after years dealing with appeals and complaints under two *Acts* – the *Freedom of Information and Protection of Privacy Act*, which came into effect Jan. 1, 1988, and the *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991 – the IPC became the oversight agency for a third *Act* when the *Personal Health Information Protection Act* (*PHIPA*) came into effect Nov. 1, 2004.

Binstock spent much of last summer preparing for the implementation of *PHIPA*.

(In brief, under *PHIPA*, an individual may complain to the IPC if he or she feels his or her personal health information has been collected, used or disclosed in a way contrary to the legislation. Individuals also have the right to access or correct their personal health information. If such an access or correction request is denied, an individual can file a complaint with the IPC.)

"We spent a great deal of time determining how these complaints should be processed through the intake, mediation and review stages," said Binstock. "We also recruited additional staff that could bring their experience in the health care sector to the Tribunal Services Department. We relied on our past experience to develop policies and procedures for processing health privacy complaints. This was a challenging and exciting time."

Looking forward, Binstock will spend part of this year making adjustments to the complaint processes for *PHIPA*. "Now that we have had several months of experience, we will be able to fine-tune the process."

Binstock, who graduated in 1980 from York University with a Bachelor of Arts Degree in geography and urban studies, joined the Ontario public service in 1982, as a human rights officer for the Ontario Human Rights Commission. During his tenure there, he also completed a one-year secondment as a search officer for the adoption disclosure register of the Ministry of Community and Social Services.

He joined the IPC in 1989 as an appeals officer, and later held the positions of inquiry review officer and appeals supervisor. He was appointed registrar in 1999, when the structure of the Tribunal Services Department was reorganized.

Binstock's interest in technology has allowed him to identify and implement methods for improving the efficiency of IPC processes and make things easier for the public to understand. For example, he designed and implemented an automated flow chart for various stages of the public sector appeals and complaint processes, and adapted it for the new *PHIPA* legislation, providing users of the IPC website site (www.ipc.on.ca) with a ready source of information on various IPC processes, all organized from the same design framework.

Binstock and his wife, Martha, have two sons, Aaron, 16, and Jason, 19 (currently on a three-month educational excursion to Europe). Aaron plays competitive volleyball, so many of the family's weekends are spent at tournaments across North America.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order MO-1865-I
Appeal MA-030326-1
City of Toronto

During the spring and summer of 2003, the City of Toronto (the city) experienced a serious health crisis when severe acute respiratory syndrome (SARS) was detected in a number of area residents. The city later received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records created at the beginning of the outbreak. The requester specified that he did not want any information that would identify SARS patients.

The city granted **partial access** to a total of 197 pages of responsive records, relying in part on section 14(1)(f) (unjustified invasion of privacy) of the *Act* to deny access. During the appeal, the requester – now the appellant – took the position that additional records should exist and the adequacy of the city's search was added as an issue. The city subsequently identified 38 additional pages and claimed that section 14(1)(f) applied to all of them. These new records were included in the scope of the appeal.

Section 14 of the *Act* only applies when the information at issue qualifies as "personal information" as defined by the *Act*. In this appeal, the IPC adjudicator's determination of whether the information qualified as personal information turned on the question of whether there was a reasonable expectation that an individual could be identified were the information disclosed.

Disclosure of some information, including names, addresses, telephone numbers, birthdates and family status, would clearly identify individuals or SARS patients. References to identification numbers assigned to the SARS patients and patients' relationships with other individuals contacted by public health officials could also identify patients. As the requester had asked that all "identifying information" be removed, the adjudicator ordered the city to sever all such information.

The adjudicator found that once the personal information of the various patients – including their names and the relationships between the patients and other individuals – was removed, there was no reasonable basis for concluding that tracking histories related to SARS patients would identify any specific individuals. He ordered disclosure of this information.

However, the adjudicator found that disclosure of information relating to clinical tests, symptoms or treatment of specific SARS patients coupled with information about early SARS patients from other public sources could identify the patients and should be withheld. He made an exception for information relating to SARS generally or patients not otherwise directly identified in the record. He found there was insufficient evidence to establish a nexus between the information and the patients that would identify a specific individual, and ordered this disclosed.

The adjudicator also ordered that information detailing the activities of officials managing the early days of the crisis be disclosed, as they neither made references to individual SARS patients, nor could they lead to the identification of any patients. The adjudicator found that the names and other related information, such as business addresses and phone numbers of physicians and health officials who had contact with SARS patients, did not qualify as "personal information" as it related to their professional responsibilities. However, where health care professionals themselves became SARS patients, the adjudicator found that this type of information qualified as the physicians' "personal information," and this information was withheld.

Assessing the adequacy of the search conducted by the city, the adjudicator found that there were some gaps in the record-gathering process that had not been adequately explained. He ordered additional searches as well as an affidavit from the city's medical officer of health identifying all officials in the city's public health department who might have responsive records in their files and attesting to the various search activities performed.

Order PO-2367
Appeals: PA-040047-1
Ministry of Health and long-Term Care

The Ministry of Health and Long Term Care (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (the Act)* for all records relating to the ministry's request for proposal (RFP) process for CT and/or MRI services at *independent health facilities* to be located in

Continued on Page 9

Mediation Success Stories

Mediation ss stories" a regular column ghlighting eral of the nt appeals have been resolved through iediation.

Having the right parties at the table led to resolution

The Ministry of Transportation (the ministry) received a four-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an impending expropriation of property near a specified highway. After paying the fee set out by the ministry, the requester received access to most of the records that she had requested. The ministry withheld the remaining records on the basis that they contained personal information or valuable government information.

The requester, now the appellant, appealed the ministry's decision to the IPC on the basis that more records responsive to her request exist.

In her letter of appeal, she explained that the ministry had served her with expropriation papers for a part of her property for the purpose of highway expansion. This part has a cold-water stream, which runs into a wetland abutting her property.

During mediation, the appellant clarified that she is looking for a full environmental assessment report of her property, including the cold-water stream. The appellant noted that the ministry had disclosed a 2002 environmental study report to her but this record did not contain any reference to her property or to the cold-water stream.

The mediator conveyed this information to the ministry, which advised that it had provided the appellant with all responsive records. However, the ministry's special advisor for FOI suggested that it might be helpful to have the ministry employees who conducted a search for the records speak directly with the appellant.

A teleconference was arranged. The ministry's special advisor for FOI, the head of records, the project engineer for Hwy. 26 and the environmental planner for the planning and design department participated in the teleconference, along with the appellant, her environmental advisor and the mediator.

The ministry's staff explained to the appellant that a full environmental assessment is not the type of document produced by the ministry and it does not have such a record. More importantly, they also provided an explanation of the ministry's environmental assessment process and preliminary design through which the ministry considers the general impact on the environment and why there was no reference to the creek in the 2002 environmental study report provided earlier to the appellant.

The appellant indicated she understood the explanations provided by the ministry and advised that she was satisfied that the ministry does not have the record she is seeking. As a result of the ministry's efforts to explain why it did not have the record at issue, the appeal was successfully mediated.

Two computers stolen from hospital

A hospital advised that two computers went missing from the physiotherapy department. The hospital was faced with how to fulfil its obligations under the *Personal Health Information Protection Act* (the *Act*), including notification of affected patients.

The hospital's network was password protected, however, the hard drives of the two computers that were stolen were not. To determine what information was stored on the computers, staff were asked to describe what they recalled saving on the hard drives.

It was determined that the computers contained some patient "progress notes." These notes included patients' full names and described the reason these patients were seeking services, the services provided and the outcome. The computers also contained a list consisting of full patient names and respective "wards."

The hospital undertook verbal notification of each patient whose name or progress note was believed to have been stored on the missing computers.

This verbal notification was carried out using a document that the hospital created with the

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Toronto Police Services Board scraps fee

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retention of photos and fingerprints of those not convicted of a crime should be severely limited. In response to the Commissioner's letter, the board decided to postpone a decision on the proposed new policy.

The issue subsequently came back before the board at its January 24, 2005 meeting, when Commissioner Cavoukian made a presentation to the board.

The Commissioner stressed that retention of photos and fingerprints of anyone arrested but not convicted (and with no previous convictions) should take place only in accordance with fair information practices establishing:

- that all non-conviction dispositions be treated in the same way;
- that any discretionary power to deny applications for destruction of fingerprints and photos be based on a clear set of criteria;
- that individuals be provided with notice that their fingerprints and photographs were being retained; and
- that no fee be charged for requests for destruction of fingerprints and photos.

Toronto lawyers Clayton Ruby and Avvy Go also made presentations opposing the proposed changes.

The board voted against the creation of the $50 fee for applications and passed a motion mandating that the chief of police consult with the Commissioner in order to develop specific criteria regarding any instances where photographs and fingerprints of those charged, but not convicted, may be retained.

From presentations and discussions at that police services board meeting, it became clear that there is no uniform policy across Ontario relating to the treatment of these records. Commissioner Cavoukian expressed a willingness to work with the Ontario Association of Chiefs of Police to formulate an Ontario-wide policy on this issue.

The Commissioner was pleased with the board's decisions. "I look forward," she said, "to working with Toronto's police chief, the Ontario Association of Chiefs of Police, and others in law enforcement on this issue."

New Senior Team at IPC

CONTINUED FROM PAGE 3

has completed the advance program in human resources at the University of Toronto and an executive program at the Richard Ivey School of Business. Janet worked for the Ministry of Transportation and the Ministry of Health before joining the IPC.

Among other appointments:

- **Mona Wong**, who joined the IPC in 1999, has been appointed Manager of Mediation. Mediation is our preferred method of resolving access appeals and privacy complaints at the IPC and Mona oversees the mediation process. She was the Team Leader of the IPC's municipal mediation team before her appointment as Manager of Mediation and has been a very key member of our Tribunal Services team. Before joining the IPC, Mona was the Freedom of Information Co-ordinator at the Ministry of Health.
- **Michelle Chibba** joined the IPC in April as our new Manager of Policy and Compliance and we are very glad to have her. Michelle has an extensive background in policy development. She was the Manager of Planning, Financial and Corporate Support for the Academic Health Sciences Centre, Alternative Funding Program, at the Ministry of Health and Long Term Care, prior to joining the IPC.
- Another very welcome addition is **Peter Khandor,** who joined the IPC in February as my Executive Assistant. Prior to joining the IPC, Peter articled and worked as an associate at the law firm Torys LLP. Peter received his law degree from Osgoode Hall Law School and was called to the Ontario bar in 2003. He also holds a Masters in Social Work from the University of Toronto.

I want to take this opportunity to thank my entire staff for their ongoing professionalism, dedication and hard work. I am very proud of my team and am grateful to have the opportunity to work with such professionals in support of open government and the protection of privacy.

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eight Ontario communities. During the processing of the request by the ministry, the requester narrowed the request to apply to only two specified providers (the affected parties).

The ministry located 12 records containing 1,808 pages as responsive to the request and denied access to them. The requester appealed the ministry's decision. During mediation of the appeal, the requester (now the appellant) narrowed the scope of the request to include only specified portions of the five successful RFP submissions by the affected parties. The appellant focused his request on specific identified information in the affected parties' RFPs.

The primary issue in this order is whether the ministry was entitled to apply the section 17(1) exemption (third party information) in the *Act* and deny disclosure.

The adjudicator examined whether the ministry satisfied each part of the three-part test under section 17(1). The adjudicator first determined that the information remaining at issue in the records qualified as "commercial information" within the meaning of section 17(1), satisfying the first part of the test. Next, he ruled that the records were clearly "supplied" to the ministry by the affected parties and that an article in the ministry's RFP, which indicated that the proposals would remain confidential, satisfied the "in confidence" requirement of part two of the three-part test.

As to the part three "harms" portions of the test, the ministry submitted that the disclosure of detailed operational, technical and trade secrets information relating to how the affected parties would operate their facilities would reveal details of their business operations and thereby cause harm to their competitive position. The ministry also suggested that should future RFPs be issued for these services elsewhere in Ontario, the affected parties would be at a disadvantage if their methodologies were revealed. The affected parties submitted that success in this industry requires the maintaining of a pool of trained employees and suggested a scenario of a "poaching" of their employees should the information be released.

The adjudicator found the affected parties and the ministry failed to provide the kind of "detailed and convincing" evidence required to uphold the ministry's decision not to disclose the records under part three of the three-part test. In the order, he stated that: "The affected parties have not provided me with specific references to the contents of the records in order to assist me in making a finding that disclosure of this information could reasonably result in any of the harms contemplated by section 17(1)."

Accordingly, the adjudicator ordered the disclosure to the appellant of the information about the RFPs sought by the appellant, except personal information such as home addresses, e-mail address and marital status.

Health
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to as the "recipient rule." For example, this means that a human resources officer, or supervisor/manager, who receives personal health information from a health information custodian who provides on-site health care, can only use or disclose that information for the purpose for which the health information custodian was authorized to disclose it, or to carry out a statutory or legal duty. The "recipient rule" only applies where personal health information is received directly from a health information custodian providing health care. *PHIPA* does not apply to personal health information disclosed by an individual employee to the employer.

Currently, organizations that collect, use, or disclose personal information during the course of commercial activities must comply with the federal *Personal Information Protection and Electronic Documents Act* (*PIPEDA*). This means that, in some cases, an employer of a health information custodian will be subject to *PIPEDA*. In the near future, the federal government is expected to deem the provisions of *PHIPA* to be substantially similar to *PIPEDA*. This ruling will likely exempt health information custodians that are covered under *PHIPA* from also having to comply with the provisions of *PIPEDA*.

If you, or your organization, have any questions regarding health information custodians, *PHIPA*, or *PIPEDA*, please contact us at info@ipc.on.ca, or visit our website, www.ipc.on.ca.

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FROM PAGE 7

assistance of the IPC. The document included a description of what had happened and described the steps taken by the hospital to contain the situation. Patients were told the police were contacted and that the computers were not recovered. Patients were also advised that the hospital was working with the IPC to ensure the hospital was meeting all the requirements under the *Act*. Contact information for the IPC was also provided.

The hospital implemented several measures to reduce the risk of a similar situation occurring in the future. Staff within the department, and all staff at the facility dealing with patient information on computers, were advised not to save personal health information on local hard drives. Department managers were asked to check computers to ensure patient information was removed from local hard drives and the hospital requested its computer support personnel to put a system or program in place that would result in documents from certain applications being saved as a default to the network. The facility also took steps to ensure new staff will receive guidance about the importance of not saving patient information to local hard drives.

The hospital also undertook some changes relating to the physical security, including changing the locks where the loss occurred.

Consent paved way to resolution of appeal

The Ottawa Police Service (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a specific police report. The report was the result of an investigation into the requester's complaint that her telephone line was being monitored. She was also concerned about a call she had received from an unidentified individual at a number that she had subsequently traced.

The police granted partial access to the record and applied the law enforcement and personal information exemptions to deny access to the remainder.

The requester, now the appellant, appealed the decision to the IPC.

During the course of mediation, the police disclosed one page of the record in its entirety to the appellant.

As well as the appellant's information, the record contained the personal information of two affected persons: the appellant's husband and the individual at the traced number, whom the police had interviewed during the course of their investigation.

After being contacted during mediation, the appellant's husband and the other affected person consented to the disclosure of their information found in the record. This resulted in the disclosure of all of the information remaining at issue. Accordingly, the appeal was resolved.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Special conference marks *PHIPA's* anniversary

A special conference is being held to mark the first birthday of Ontario's newest privacy *Act* - the *Personal Health Information Protection Act* (*PHIPA*).The first *PHIPA Summit*, organized by the Office of Information and Privacy Commissioner/Ontario (IPC), will provide an opportunity for members of the health provider community to share their own experiences with *PHIPA* over the past year, to learn best practices and to participate in discussions with field leaders.

"It has been a highly successful inaugural year," said Commissioner Ann Cavoukian, "but there is much to review and future challenges to discuss. I am very pleased with the quality of speakers and panel members that we have been able to attract."

The conference is being held Thursday, November 3, at the Metro Convention Centre in Toronto. More information, including how to register, is available at **http://www.governmentevents.ca/phipa2005/**.

PHIPA has attracted a lot of attention during its first year. The IPC has received more than 4,000 *PHIPA*-related phone calls and e-mails. Additionally, more than 400,000 copies of the 20-plus special *PHIPA* publications the IPC has produced – ranging from brochures to fact sheets to major papers – have been sent out. Thousands of copies have also been downloaded from the IPC's website, **www.ipc.on.ca**.

Commissioner Ann Cavoukian with one of the popular "short notices" posters. See story on page 3.

The theme of the summit is *PHIPA: A Balancing Act*. "*PHIPA* is built on a very careful balance," said Commissioner Cavoukian. "Effective health information privacy legislation must strike the right balance between allowing health care providers to quickly pass on the information needed for patient care to other health providers, while restricting unauthorized disclosure."

There will be an opportunity at the summit for attendees to participate directly in breakout sessions featuring discussions on *PHIPA* regarding Consent, Permissible Disclosures, Health Research Issues, Privacy Breaches and Implementation Challenges.

this issue:

Recent IPC Publications

The IPC has issued (in order of publication) the following publications since the last edition of *IPC Perspectives:*

Commissioner's PHIPA *Highlights: Here's what health professionals are asking about Ontario's new health privacy legislation.* March 2005.

***Fundraising under* PHIPA,** a *PHIPA* fact sheet. April 2005.

Reporting Requests under PHIPA, a *PHIPA* fact sheet. April 2005.

Consent and Form 14, a *PHIPA* fact sheet. April 2005.

Section 45 Entities under the Personal Health Information Protection Act, a status report. May 2005.

Section 39(1)(c) Registries under the Personal Health Information Protection Act, a status report. May 2005.

Your Health Information and Your Privacy in Our Office, a *PHIPA* short notices brochure and poster. June 16, 2005.

Your Health Information and Your Privacy in Our Hospital, a *PHIPA* short notices brochure and poster. June 16, 2005.

Your Health Information and Your Privacy in Our Facility, the third *PHIPA* short notices brochure and poster. June 16, 2005.

2004 Annual Report. June 22, 2005.

Fact Sheet on Adoption Information Disclosure. June 29, 2005.

Disclosure of Information Permitted in Emergency or other Urgent Circumstances, a fact sheet. July 2005.

Lock-box Fact Sheet. July 2005.

A Review of the Literature on Adoption-Related Research: The Implications for Proposed Legislation. August 2005.

Alert for Birth Parents. An adoption identification alert. September 2, 2005.

Identity Theft Revisited: Security is Not Enough, which focuses on the role and responsibility of organizations in preventing and dealing with identity theft. September 2005.

All of these publications and more are available on the IPC's website at **www.ipc.on.ca.**

Upcoming Presentations

October 27. Commissioner Ann Cavoukian is participating in a plenary panel at the International Association of Privacy Professionals 2005 Privacy Academy in Henderson, Nevada. Her topic is *The Perfect Privacy Storm: Why Privacy Supports Security.*

November 3. Commissioner Cavoukian, Ken Anderson, Assistant Commissioner (Privacy) and Brian Beamish, Assistant Commissioner (Access) are all addressing the first *PHIPA* Summit, *PHIPA: A Balancing Act,* at the Metro Toronto Convention Centre.

November 29. Commissioner Cavoukian is the keynote speaker at *Sun Microsystems' Identity Management Executive Seminar* at St. Andrew's Club & Conference Centre, Toronto. She is speaking about identity theft.

December 19. Commissioner Cavoukian is the keynote speaker at the *Privacy Compliance in Healthcare* conference at the Sheraton Centre Hotel, Toronto. Her topic will be Ontario Initiatives in Privacy Compliance: Role of Privacy Officer.

Making it easier for patients

Notifying patients and clients how their personal health information will, and can, be collected, used or disclosed is an important element of privacy protection. Yet, most privacy notices are difficult to understand unless you are a lawyer or a policy analyst. Faced with lengthy notices full of legal jargon and endless clauses, sub-clauses and the proverbial "fine print," many people just read the first few lines of a privacy notice and then put it down.

Commissioner Ann Cavoukian, concerned that a majority of Ontarians did not have a clear understanding of their privacy and access rights under the province's new *Personal Health Information Protection Act (PHIPA)*, approached the Privacy and Health Law sections of the Ontario Bar Association (OBA) about starting a special project. The IPC then formed a working group with representatives of the OBA, the Ministry of Health and Long-Term Care and the Ontario Dental Association to develop "short notices."

Essentially, a short notice is a condensed privacy notice, in clear simple language, informing patients or clients of their privacy rights. The working group decided to use a multi-layered approach that has proven to be highly successful.

A privacy notice should contain information that conveys who the notice covers; the types of information collected directly from the individual and indirectly from others about the individual; the uses or purposes for the data collected; the types of entities that may receive the information (if it is shared); information on choices available to the individual to limit use and exercise any access or other rights, and how to exercise those rights; how to contact the organization for more information or to file a complaint.

The challenge was providing this information in a brief, highly readable way.

Readable short notices ensure that patients or clients are well informed and empowered with a choice regarding how their personal information will be used. Additionally, short, clear notices also provide benefits for health information custodians.

First, short notices allow for effective communication with patients, clients and members of the public, allowing for the growth of a relationship based on trust. Second, it makes it easier for health information custodians to comply with *PHIPA,* as the *Act* requires custodians to take reasonable steps to inform the public about their information practices and how patients may exercise their rights.

The short notices developed by the working group include separate notices for each of three health care groups: primary care providers (including doctors, chiropractors, etc.); hospitals; and long-term care facilities.

A fact-packed, but easily readable, multi-coloured poster was created for each of the three groups. The second layer is a more detailed, but still easily readable, brochure for each of the three groups, with the same colour scheme as the respective posters.

The posters and brochures have been in high demand. More than 200,000 copies of the brochures and more than 100,000 copies of the posters have already been distributed to health information custodians.

The posters are hung on office walls or elsewhere in a hospital or other facility. The brochures are given to those patients or clients who, after reading the poster, would like additional information.

The posters and brochures can be downloaded from the IPC's website, **www.ipc.on.ca.**

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order MO-1947
Appeal MA-050184-1
City of Toronto

The requester, CBC Radio-Canada, filed four access-to-information requests with the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), seeking access to all records regarding civil lawsuits involving four city departments that the city had settled with third parties from 1998 to 2004. The records sought dealt with information about the number of lawsuits, dates settled and dollar amounts.

The city denied access, citing the exemptions in sections 11(c) and (d) of the *Act*. Section 11(c) allows an institution to refuse disclosure of a record that contains information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution. Section 11(d) allows an institution to refuse disclosure of a record that contains information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution.

The requester (now the appellant) appealed the city's decision to the IPC. In its representations, the city submitted it was reasonably likely to face the following financial and economic harms if the information at issue was disclosed:

- the number of claims made against the city was reasonably likely to increase; and
- premiums were reasonably likely to increase or the city might lose its insurance coverage.

In her order, the Commissioner stated that for sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The Commissioner found that the city had not adduced any fact-based evidence to support its assertion that the release of claims information often sparks widespread public debate and discussion as to when a person may commence an action against the city, which, in turn often leads to a sudden rise in claims. Moreover, given that the city had not adduced any fact-based evidence to support its assertion that the release of the types of claims information sought by the appellant could reasonably be expected to lead to a "sudden rise in claims" against the city, it did not logically follow that its insurer would demand increased premiums or that the city would lose its insurance coverage altogether.

The Commissioner concluded that the city had not discharged the burden of proving that the records at issue fall within the exemptions in sections 11(c) or (d) of the *Act*. The evidence adduced by the city amounted to speculation about possible harm, which was insufficient to meet the requirements of sections 11(c) or (d). Consequently, she ordered that the records at issue be disclosed to the appellant.

At the end of her order, the Commissioner stated that she was pleased that Toronto Mayor David Miller is committed to open and transparent government and urged him to ensure that there is a shift in the city bureaucracy from a protective mindset to a culture of openness. This culture shift should be based on the principles that information should be available to the public, and that necessary exemptions from the right of access should be limited and specific. Exemptions should not simply be claimed because they are technically available in the *Act*; they should only be claimed if they genuinely apply to the information at issue.

Within hours of the release of the Commissioner's order, the city disclosed the records at issue to the appellant. In addition, Mayor Miller stated publicly that he was pleased with the order and told reporters the city was continuing to take steps to change the culture.

Order PO-2410
Appeal PA-040034-2
Ministry of the Environment

The requester had previously received data from the Ministry of the Environment (the ministry) relating to its *Drive Clean* database. He filed a new access-to-information request with the ministry under the *Freedom of Information and*

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IPC's O'Donoghue likes new challenges

Since her initial role as an appeals officer, Mary O'Donoghue has been both witness and key participant in the transformation of the office of the Information and Privacy Commissioner/Ontario from a fledgling organization of about 25 people in 1988 during its start-up phase to its current stature and size of around 85 employees.

In her current position as Manager of Legal Services, O'Donoghue oversees a department of 13, including lawyers, an articling student, summer students, paralegals, and support staff. As well as assigning files and ensuring the workflow moves along smoothly, she is responsible for long-term planning for her department. As a Senior Legal Counsel, O'Donoghue also provides legal advice on major projects.

After joining the IPC as an appeals officer in late 1988, she was appointed as a legal counsel in November 1990. She was seconded to the Ministry of Attorney General for part of 2000 to assist with the Integrated Justice project. She was appointed Manager of Legal Services in 1999.

Mary O'Donoghue, Manager of Legal Services

When asked to describe the best thing about her job, an exuberant O'Donoghue cites the variety of issues and topics she deals with. "It's exciting to be involved in so many different areas of law and new and challenging legal policy issues. This agency is at the leading edge in the development of privacy law, because the Commissioner has a keen interest in new developments at the forefront of the privacy arena" she observes. Finding time for her own legislative work is a particular challenge, "especially when we are extra busy responding to new issues and inquiries." She calls the IPC "a dynamic, hard-working and wonderful place to work, if you're interested in a wide variety of policy topics, which is why, after coming here initially for a temporary five-month assignment, I've stayed for nearly 17 years!"

Assistant Commissioner Ken Anderson, to whom O'Donoghue reports, is enthusiastic in his praise for her contributions to the IPC. "She brings a richly varied legal expertise, coupled with a keen insight."

O'Donoghue, who hails from Dublin on the Irish Sea, left the Emerald Isle at 25. Most of her family still lives there, and she frequently travels to Ireland to visit. She attended Trinity College, Dublin, earning a degree in Economics and History. After immigrating to Canada, she attended Osgoode Hall Law School, York University, which her husband, Paul Reinhardt, now a judge of the Ontario Court of Justice, also attended. They have two children. Daughter Francesca, 22, a novice parliamentary intern in Ottawa, is also a graduate of Trinity College, Dublin, as well as a Licensee from the Université Robert Schumann, Strasbourg, France. Son Charles, 20, graduated from high school in Ireland, and is currently attending the University of Toronto.

An avid reader, O'Donoghue's other passion is travel. She especially enjoys visiting Italy – Rome in particular, which she wistfully calls "only the most beautiful place in the world."

She is an active member of the Canadian Bar Association Council and is currently chair of the OBA Constitutional, Civil Liberties and Human Rights section, former chair of the Administrative law section and current Executive member of the Privacy law section.

"Short notices," a recent major project O'Donoghue spearheaded, has been a source of great personal satisfaction for her. One requirement of Ontario's new *Personal Health Information Protection Act, 2004* (*PHIPA*) is for health

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Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

The IPC encourages parties in mediation to interact directly with one another, through a face-to-face meeting or through teleconference, as part of the new interactive mediation process. Here are two cases where the police participated in this new process with very positive results for all parties.

MFIPPA: Police participation achieves better mediated solutions

Success story No. 1

The Stratford Police Services Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a workplace-related fatality. The police granted partial access. The requester, now the appellant, appealed to the IPC the police service's decision to deny access to the remaining records.

During mediation, the IPC mediator had extensive discussions with the police FOI co-ordinator on the possible application of the exemptions claimed and the benefits of an index of records. The police then prepared and provided an index of records to the appellant, which the appellant found to be very helpful. The police service also reviewed its earlier decision on access and issued a supplementary decision, granting access to additional records.

The mediator shared relevant orders with both parties and suggested they also review the IPC's *Practice* guidelines on mediation. By reading relevant orders, the appellant gained a more realistic perspective on the records requested and the application of the *Act*.

The parties then engaged in a productive teleconference where each party shared its perspective and then examined how each might contribute to a successful mediated solution. The police agreed to review the file with a view to further disclosure where possible. The appellant, for his part, agreed not to pursue certain records that were not priorities.

Upon receipt of the additional records, the appellant subsequently advised the mediator that he was satisfied with the results of mediation and the appeal file was closed.

In this appeal, the initial steps of co-operation set the tone for more co-operation. The first efforts put in by both parties resulted in them approaching the teleconference with a spirit of working together to come towards resolution. The discussions and sharing of information and perspectives at the teleconference contributed directly to a better understanding between the parties and led to a positive outcome. The appellant appreciated the time spent and the efforts made by the police to make the process more transparent and to disclose additional records. The police service felt satisfied that it had used its best efforts to assist the appellant, within the framework of the *Act* and the new interactive model of mediation. A win-win for all!

Success story No. 2

The Ottawa Police Service received a request under the *Act* for witness statements and police officer notes regarding a motor vehicle accident involving the requester. The police granted partial access to the records and withheld the remainder. The requester, now the appellant, appealed the decision to deny access.

During a background meeting with the mediator, the appellant had an opportunity to tell her story, express her frustrations and clarify what her priority interests were. The mediator had discussions with the police, who agreed to review the earlier decision on access and disclose further records.

The mediator advised the witnesses that their statements to the police fell within the records that were subject to the appeal and sought their consent to disclosure of the records. The witnesses declined to give consent for the disclosure of their statements. The mediator explained to the appellant that, under the *Act*, information relating to another individual could not be disclosed without his/her consent.

The parties then participated in a joint teleconference with the mediator. The mediator reviewed the progress to date, which created a positive climate for a meaningful discussion between the parties. Through discussions with the appellant at the teleconference, the police gained a clearer understanding of the context for the request. The police explained that if the appellant was contesting the ticket she had received as a result

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of an accident, it was likely that she might receive full disclosure of the related records from the Provincial Offences Office. The appellant agreed to pursue this alternative avenue, and not proceed with the appeal.

By participating in the new interactive mediation process and discussing the issues in the appeal directly with the appellant and suggesting a possible solution, the police service showed itself to be a responsive partner in problem resolution.

PHIPA: Challenges included notifying "unidentified" patients

A private laboratory advised that a computer was found missing after a break-in. Stored on the computer were electrocardiogram (ECG) data and each patient's name, address, birth date, treating physician, and relevant medical history. There was an estimated two and a half years of data on the hard drive, with no back-up copy elsewhere. These factors made identifying the number of patients affected and determining their contact information very difficult.

The IPC worked closely with the lab to develop a notification program to fit the circumstances of the loss and reach as many patients as possible. The program agreed upon provided for the following:

(a) A letter to area physicians, with a public notice enclosed:

The lab forwarded a letter and "public notice" to all area family physicians and cardiologists who regularly sent clients for testing. The letter advised the physicians of the loss and requested they post the public notice in their office. The notice described the loss and provided the lab's contact information. The letter also asked the physicians to provide a copy of the public notice to any patients believed to be affected. With the agreement of the Ontario Medical Association (the OMA), the letter included a statement indicating the OMA was supportive of the doctors helping to make patients aware of the incident.

(b) Posting a public notice at the lab where the theft occurred:

The lab posted a copy of the public notice at its facility as there was significant potential for affected patients to return to the lab for further testing.

(c) A news release to local media outlets:

The lab also issued a news release containing similar information to that set out in the public notice.

Looking ahead, the lab advised that it would ensure data is properly backed up, securely stored and deleted from the computer used to collect the diagnostic data. As well, password protection was implemented for all computers at the lab and a monitored security alarm system installed.

The lab also determined it would develop and implement a data sharing agreement, in consultation with the IPC, to address its relationship with the private company that provides diagnostic analysis of patient ECG data.

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professionals to communicate with consumers and clients about their rights under this *Act*. Privacy notices, however, says O'Donoghue, often "are ineffective because they are too complex and they don't use language that the clients can understand."

Privacy commissioners around the world are trying to encourage the use of short, easily read privacy notices and Commissioner Ann Cavoukian challenged the Ontario Bar Association (OBA) to collaborate with the IPC in developing short privacy notices that can be used by health practitioners, hospitals and long-term care facilities to inform patients about their rights and choices. The Commissioner, who has great confidence in O'Donoghue, appointed her to lead the project for the IPC.

In this project, she co-ordinated efforts by a group of lawyers from the OBA (Health and Privacy Law sections), the Ontario Dental Association and the Ministry of Health and Long-Term Care. The varied expertise of the group members was important in creating multi-layered privacy notices – colourful, easy-to-read and understand posters, and more in-depth, but still easy-to-read brochures, which were released in June. Demand for the popular posters and brochures has exceeded all expectations.

"I was very pleased to be a part of this successful project," said O'Donoghue.

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CONTINUED
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Protection of Privacy Act (the *Act*), seeking access to an electronic copy of information from the database, including vehicle identification numbers (VINs) and test identification numbers (TINs).

The ministry issued a decision letter, granting partial access to the requested information, withholding the vehicle identification numbers (VINs) and the test identification numbers (TINs). The ministry claimed the exemption under section 21(1) (unjustified invasion of personal privacy) to deny access to all VINs and TINs, and the exemptions under sections 14(1)(e) (endanger life or safety) and 14(1)(i) (security) to deny access to all law enforcement related information.

The requester (now the appellant) appealed the ministry's decision to the IPC. During the adjudication process, the appellant withdrew his request for the TIN, or its Ontario equivalent, the VCIN. Therefore, the only remaining data element at issue in the appeal was the VIN.

In his order, the Assistant Commissioner for Access found that the VIN is accurately described as information about a vehicle rather than about a vehicle's owner in a personal capacity. The VIN is information that is tied to the vehicle, not the owner; when ownership of the vehicle changes, the VIN remains the same. Consequently, he concluded that the VIN did not qualify as personal information as defined in section 2(1) of the *Act*.

As the personal privacy exemption in section 21(1) can only apply to information that qualifies as personal information under section 2(1), the Assistant Commissioner found that it was not necessary for him to determine whether section 21(1) applied. As no other discretionary or mandatory exemptions applied to the non-law enforcement related VINs, he ordered that they be disclosed to the appellant.

Two issues were raised in the appeal with regard to law enforcement:

- The ministry and three affected-party, law-enforcement agencies claimed that all information in the *Drive Clean* database that related to unmarked law enforcement vehicles registered to law enforcement agencies were exempt from disclosure under the discretionary exemptions in 14(1)(e), (i) and (l). This included the make, model and year of the unmarked vehicles, VINs, results of emissions tests and identification number of the garage performing the tests.
- The ministry also claimed that information related to its own covert vehicles used as part of the *Drive Clean* program was exempt from disclosure under the discretionary exemption in 14(1)(c).

The Assistant Commissioner found that that disclosure of the VINs of unmarked law-enforcement vehicles, in combination with the other data elements in the *Drive Clean* database, could be linked back to the police agency that owns those vehicles, thus identifying a vehicle and ultimately endangering the safety of an undercover police officer and potentially members of the general public. Consequently, he concluded that the information at issue about unmarked law-enforcement vehicles contained in the *Drive Clean* database was exempt from disclosure under section 14(1)(e).

However, he found that the ministry did not provide persuasive information that disclosure of the VINs or other information in the *Drive Clean* database about covert test cars would reveal an investigative technique or procedure. Accordingly, he found that the disclosure of information relating to covert vehicles used by the ministry as part of the *Drive Clean* program was not exempt from disclosure under section 14(1)(c).

In summary, the Assistant Commissioner ordered the ministry to provide the appellant with an electronic copy of all data elements from the *Drive Clean* database previously disclosed to the appellant, and in addition, all vehicle identification numbers (VINs), with the **exception** of any information relating to unmarked law-enforcement vehicles registered to law-enforcement agencies, including make, model and year of unmarked vehicles, VINs, results of emissions tests and identification number of the garage performing the tests.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

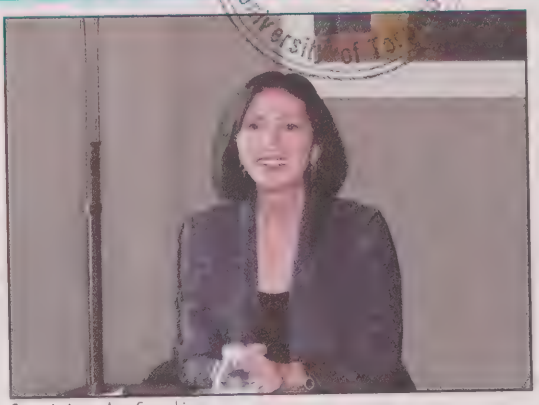
Proposed regulation to regulate fees for access under *PHIPA*

Since the introduction of the *Personal Health Information Protection Act* (*PHIPA*) in November, 2004, the IPC has responded to numerous inquiries and complaints from members of the public about the fees that some health information custodians have been charging individuals for providing access to records of personal health information. *PHIPA* currently allows custodians to charge a reasonable cost recovery fee, but provides no guidance on what may be considered reasonable in this context. Consequently, the fees that are being charged can vary widely from one health information custodian to the next. Information and Privacy Commissioner Ann Cavoukian asked the government to address the issue of fees through regulation.

The Ministry of Health and Long-Term Care published a proposed regulation in the Ontario Gazette March 11, 2006, that sets out the fees that health information custodians would be able to charge individuals for providing access to records of personal health information under *PHIPA*.

If the proposed regulation is passed, health information custodians would be entitled to charge an individual up to $30 (total) for any or all of the following:

- Receipt and clarification of a request for a record;
- Providing a fee estimate;
- Locating and retrieving the record;
- Reviewing the contents of the record for up to 15 minutes to determine if the record contains personal health information to which access may be refused;
- Preparing a letter of response;
- Preparing the record for photocopying, printing or electronic transmission;
- Photocopying or printing a record up to a maximum of 20 pages (excluding the printing of photographs);
- Packaging of the record for shipping or faxing;
- Electronically transmitting a copy of the record, instead of printing, shipping or faxing;
- Faxing or mailing a copy of the record;
- Supervising the individual's examination of the record for not more than 15 minutes.


Commissioner Ann Cavoukian

Additional fees could be charged for additional services, such as photocopying where a record exceeds 20 pages, or making a copy of the record on a storage medium such as a video cassette.

Members of the public can provide comments to the Ministry of Health and Long-Term Care on the proposed regulation up until May 10, 2006.

In this issue:

Recent IPC Publications

The IPC has issued (in order of publication) the following publications since the last edition of *IPC Perspectives:*

Submission to the Standing Committee on Regulations and Private Bills - Bill 123: Transparency in Public Matters Act, 2004. September 2005.

Long-term Care Homes: Consent and Access under the Personal Health Information Protection Act, 2004, a ***PHIPA* fact sheet.** October 2005.

Privacy Impact Assessment Guidelines for the Ontario Personal Health Information Protection Act. November 2005.

PHIPA Practice Direction 1: Clarifying Access Requests. December 2005.

PHIPA Practice Direction 2: Drafting a Letter Responding to a Request for Access to Personal Health Information. December 2005.

Secure Destruction of Personal Information, a PHIPA fact sheet. December 2005.

Health Information Custodians Working for Non-Health Information Custodians, a *PHIPA* fact sheet. February 2006.

The Personal Health Information Protection Act, 2004 - A Video Guide for Training and Education (video). March 2006.

A Word About RFIDs and Your Privacy in the Retail Sector (video). March 2006.

All of these publications and more are available on the IPC's website at **www.ipc.on.ca.**

Presentations

Among recent presentations, Commissioner Ann Cavoukian was a special guest speaker at an HSBC Women's Forum in late April, addressing a number of HSBC managers from across Ontario. And in early May, the Commissioner was a keynote speaker at a privacy and security seminar organized by Gowling Lafleur Henderson and ITAC. The seminar was entitled, *Privacy and Security Update: Outsourcing, Security and Compliance – Practical Tips for Business.*

May 8. Assistant Commissioner (Privacy) Ken Anderson is speaking at the Canadian Institute's *Implementing the Personal Health Information Protection Act* conference at the Four Seasons Hotel, Toronto. His topic is *Evaluating PHIPA: Is it a good thing?*

May 25. Commissioner Cavoukian is making a presentation to business executives – on the direct relation between privacy and the bottom line – at a Toronto seminar sponsored by Fogler Rubinoff.

May 29. Commissioner Cavoukian is a special guest speaker at the Canadian Region conference of ARMA International (formerly the Association of Records Managers and Administrators) at the Delta Chelsea Hotel, Toronto. Her topic is *Do You Think Secure Records Destruction is Boring? Think Again and Avoid Becoming the Next Hit.*

June 7. Commissioner Cavoukian is presenting at the International Association of Business Communicators (IABC) International Conference at the Hyatt Regency and Fairmont Hotel, Vancouver. Her presentation is entitled: *Make privacy work for you: Turn promises into commitments and strategies.*

September 27. Commissioner Cavoukian is the speaker at the Powerpoint Group's Women of Influence luncheon at the Metro Toronto Convention Centre. She will be sharing her personal life experiences in having overcome obstacles in attaining her goals.

A practical tool for health information custodians

The IPC has developed a special tool – the *Privacy Impact Assessment Guidelines for the Ontario Personal Health Information Protection Act* – to help health information custodians.

The PIA guidelines and questionnaire were developed to assist health information custodians in conducting privacy impact assessments to review the impact of a proposed or existing information system, technology or program on the privacy of individuals.

A privacy impact assessment is a risk management tool that:

- identifies the actual or potential risks to privacy posed by an information system, technology or program;
- identifies and addresses the manner in which these actual or potential privacy risks can be mitigated; and
- addresses whether or not the retention, collection, use, disclosure or disposal of information is compliant with privacy legislation.

A privacy impact assessment can help ensure compliance with sections 12(1) and 13(1) of *PHIPA*. These provisions require health information custodians to take reasonable steps to ensure personal health information is protected against theft, loss and unauthorized use, disclosure, copying and disposal, and to ensure personal health information is retained, transferred and disposed of in a secure manner.

"A PIA is an indispensable tool when it comes to performing due diligence," said Manuela DiRe, health law counsel at the IPC, who delivered a presentation on privacy impact assessments at the IPC-sponsored *PHIPA Summit* in November.

The *Privacy Impact Assessment Guidelines for the Ontario Personal Health Information Protection Act* are divided into two parts. Part one deals with the organizational privacy management practices of a health information custodian as a whole. Part two relates to the privacy management practices of the health information custodian in relation to the specific information system, technology or program. The privacy impact assessment questionnaire may be filled-out directly in the workbook or by using the newly produced interactive CD.

The *Privacy Impact Assessment Guidelines for the Ontario Personal Health Information Protection Act* can be downloaded from the IPC's website: www.ipc.on.ca/docs/phipa_pia-e.pdf. Or, to request a copy, contact the IPC at 1-800-387-0073, or 416-326-3333, or by e-mail at publication@ipc.on.ca.

A privacy impact assessment tool for the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* is also available. It was developed by the forerunner of the Ministry of Government Services, with input from the IPC. That PIA is accessible on the website of the Ministry of Government Services: www.accessandprivacy.gov.on.ca/english/index.html.

Two educational videos available from IPC

One of the core roles of the IPC is to help educate the public about access and privacy issues. The IPC uses a variety of methods and programs – from its outreach program, to its publication program, to its speakers program, to its extensive website – to help accomplish this.

Adding to these resources, the IPC has produced two free videos, one of which is a training tool for health information custodians and their staff. The other is an educational tool that addresses privacy issues related to radio frequency identification tags (RFIDs).

- ***The Personal Health Information Protection Act, 2004 - A Video Guide for Training and Education.*** This training video for health care professionals and health information custodians, with four true-to-life scenarios, was developed by the IPC to address many of the questions posed by health professionals regarding the best way to ensure compliance with the *Personal Health Information Protection Act*. It is available on the IPC website, www.ipc.on.ca. Or, you can order a copy by sending an e-mail to the IPC at publication@ipc.on.ca.
- ***A Word About RFIDs and Your Privacy in the Retail Sector.*** This short video is aimed at both the public and businesses. It dispels some of the myths about RFIDs and explains what the key privacy issues really are. The video is available on the IPC website in two formats: Windows Media Format and Real Media Format. If you would like to order a DVD copy of this nine-minute video, send an e-mail to: publication@ipc.on.ca.

Facing hard decisions doesn't faze Hale

Some decisions have more impact than others. Just ask Donald Hale, the IPC's newly appointed adjudication team leader, who has issued more than 800 orders over the past 14 years as an IPC adjudicator. The first person to hold the new position of adjudication team leader, he recalls one order in particular.

"In Reconsideration Order R-980015, I evaluated and commented on the distinction between personal information – as defined in section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act* – and information that relates to an individual in their professional or employment capacity or as a spokesperson for an organization. This was an important decision that continues to inform the discussion of this very difficult issue to this day."

Donald Hale, Adjudication Officer

Hale, in his new role, describes himself as a resource person for IPC adjudicators. He assists them in conducting their research, drafting their orders, and advising on procedural matters that arise in the course of an inquiry. Because each adjudicator is an independent decision-maker, their decisions are entirely their own and cannot be directed by the team leader.

Adjudicators can tap into his knowledge of the exemptions and procedural provisions in the *Acts* and in the IPC's approach to decision-making.

If a provincial or municipal government organization denies a freedom of information request for access to information on the basis that it falls within one of the listed exemptions in the *Acts*, that decision (and a number of other issues, including fees, lack of adequate search, etc.) can be appealed to the IPC.

Appeals that cannot be resolved through mediation end up with an IPC adjudicator, who will ultimately either uphold the government organization's decision or order some or all of the information disclosed, or require other action (such as an additional search for records).

When an appeal reaches an adjudicator, he or she launches an inquiry. "This involves," said Hale, "seeking the representations, usually in writing, of the parties to the appeal through the issuance of a Notice of Inquiry that sets out the facts and issues in the appeal. The representations received from the parties are then usually shared with the opposite parties in order to allow them the opportunity to test or dispute the evidence and arguments made by the other side or other sides."

Following the submission of the parties' representations, said Hale, the adjudicator addresses the issues in the appeal in a written decision that applies the principles in the *Acts* to the appeal and determines whether the government organization's decision ought to be upheld. "If the adjudicator finds that the exemptions claimed by the government organization do not apply in that particular case, he or she will order the records to be disclosed to the appellant. Other sorts of relief can also be ordered, including requiring that additional searches for responsive records be undertaken, upholding or denying a fee or a request for a fee waiver, or ordering the correction of information contained in a record."

Originally from Windsor, Hale earned a degree in history and then a law degree from the University of Windsor. Called to the bar in 1981, he subsequently set up his own general

Continued on Page 5

Free IPC access and privacy seminars

The IPC is conducting access and privacy seminars in three regions of Ontario this year, as part of its *Reaching Out to Ontario* program.

A small IPC team was in Belleville in late April and IPC teams will be going to Owen Sound, June 7 and 8, and to Thunder Bay, Oct. 4 and 5.

As well as a number of other meetings and presentations, the educational initiatives in Owen Sound and Thunder Bay will include:

- a seminar for Freedom of Information and Privacy Co-ordinators from area municipalities, police services, school boards, health units, libraries and other government organizations covered under the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act;* and
- a seminar for health information custodians, including health care practitioners, hospitals, homes for the aged, operators of ambulance services or other community services that fall under the new *Personal Health Information Protection Act (PHIPA),* and all other professionals or organizations that fall under *PHIPA.*

If you would like more information about either seminar in either city, please call Karen Hale at the Communications Department of the IPC at 416-326-4804, or send an e-mail to Karen.Hale@ipc.on.ca.

Profile: onald Hale

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law practice in Windsor. Moving to Toronto, Hale got married and, in 1985, joined the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) – the professional organization for performers and writers working in the film, television and radio industry in Canada – working at a number of progressively more responsible jobs within that organization. When he left, he was the senior staff person for the 10,000-member Performers' Guild, but the 70-hour-plus workweeks were taking their toll.

He joined the IPC in 1992 as an appeals officer (today, the title is mediator). In 1993, he was promoted to inquiry officer (the equivalent of today's adjudicator position).

Hale, who spent a year on secondment as an arbitrator at the Financial Services Commission of Ontario in 1999, takes time to participate in many IPC after-hours activities. He is always willing to talk about managing his floor's softball team to a 20-0 win over the rival 15th floor in the annual staff softball game last fall.

He has also been involved in an in-house training program delivering lectures to staff about the operation of the provincial *Freedom of Information and Protection of Privacy Act* and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act.* And, he has made presentations at the annual fall Access and Privacy conferences that the Ministry of Government Services (formerly Management Board Secretariat) organizes, as well as presenting at the Ontario Society of Adjudicators and Regulators' *Conference of Ontario Boards and Agencies.*

As a single father, having lost his wife several years ago, Hale is busy raising his 18-year-old, developmentally delayed son, Matthew, with whom he has a very special relationship. Hale is active with Community Living Toronto.

His favourite pastimes include spending time with Matthew, "hanging out" with his significant other, Wendy, vice-principal of a Toronto-area elementary school, and watching baseball.

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

ORDER MO-2019
Appeal MA-050209-1
York Regional Police Services

This appeal involved a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the York Regional Police Services Board from a member of the media. The requester asked for records compiled over the past five years relating to the identification of properties in York Region that were used for illegal drug operations such as "grow houses" or illegal drug laboratories.

The police located a single responsive record – an internal summary listing of such properties – and denied access to it on the basis that it contained information that was exempt under sections 8(1)(a), (b) and (f) and 8(2)(a) (law enforcement) and 14(1) (personal privacy) of the *Act*. The requester appealed the decision to the IPC.

Assistant Commissioner Brian Beamish rejected the police contention that the information fell within the ambit of the law enforcement exemptions in sections 8(1)(a) and (b). After reviewing the representations of the police, he found that the police failed to make the necessary evidentiary link between the disclosure of the records and the harms addressed in these sections. He also rejected the police claim with respect to section 8(1)(f), which addresses the situation where disclosure may impair an individual's right to a fair trial, and section 8(2)(a), which applies where a record is a "law enforcement report."

The Assistant Commissioner found that the record contained information that qualified as "personal information," as that term is defined in section 2(1) of the *Act*. He determined that the disclosure of the addresses of the properties gave rise to a reasonable expectation that the property owners could be identified through the use of secondary sources such as reverse directories or municipal assessment rolls. As a result, the addresses of the properties used as "grow houses" could be said to represent "recorded information about an identifiable individual," as contemplated by the definition of "personal information." He went on to find that information listing the charges laid, the presence of children in the home and the fact that plants or money were seized as a result of the investigations also relates to identifiable individuals, based on the same reasoning.

As part of his consideration of the personal privacy exemption in section 14(1), the Assistant Commissioner found that the presumptions in sections 14(3)(b) and (f) did not apply to the information as it was not compiled as part of the investigation of the offences (but rather after its completion) and did not contain information describing an individual's finances. The Assistant Commissioner evaluated the relevance and weight to be afforded to the considerations listed in sections 14(2)(a) (public scrutiny of police activities) and (b) (public health or safety), along with several other considerations (public confidence in the integrity of the police and consumer protection). He then weighed these considerations against those favouring privacy protection in sections 14(2)(f) (highly sensitive information) and (i) (unfair damage to reputation) and determined that, on balance, the factors weighing in favour of disclosure were more compelling than those favouring privacy protection with respect to the **majority** of the personal information in the records.

However, the Assistant Commissioner held that the disclosure of the personal information in the records that relates to the presence of children would be an unjustified invasion of personal privacy. He found that the disclosure of the remaining personal information would not result in an unjustified invasion of personal privacy and ordered that this information be disclosed to the appellant.

The order concludes with an additional finding that, even if he had found the personal information in the records to be exempt under section 14(1), the Assistant Commissioner would have ordered its disclosure under the "public interest override" provision in section 16 of the *Act*. Assistant Commissioner Beamish reached this conclusion because the compelling public interest in the disclosure of the information clearly outweighs the purpose of the personal privacy exemption in the circumstances of this particular case.

Order PO-2439
Appeal PA-030261-3
Ontario Native Affairs Secretariat

This appeal involved a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a particular land claim. The requester asked the Ontario Native Affairs Secretariat (ONAS) for access to various economic studies, an agreement involving a mining

Continued on Page 8

Mediation success stories

Mediation ess stories" s a regular column ighlighting eral of the nt appeals that have n resolved through mediation.

Discovering why fee was so high led to resolution of three appeals

A requester submitted three very broad requests to the Ministry of Finance, for records relating to cross-border shopping from 1988 to 1993, for records relating to the underground economy for the same period, and for records relating to tax reviews and analysis of cigarette manufacturers and the cigarette manufacturing sector. The ministry issued an interim decision and fee estimate for each of these three requests, each in excess of $300,000. The requester (now the appellant) appealed these estimates to the IPC.

During mediation, both parties expressed a keen interest in resolving these appeals through mediation. The appellant was amenable to modifying his requests, and the ministry was prepared to provide complete details of the basis for the fee estimates.

The appellant and the ministry exchanged some preliminary information about the focus of the requests and the kinds of records held by the ministry. A conference call was then arranged involving the relevant program staff of the ministry and the ministry FOI co-ordinator, the appellant and the mediator. The ministry began by explaining that most of the records responsive to the requests are archived electronic records. The ministry provided details about how such records are maintained on tapes, and the steps necessary to both access these archived tapes and search through them for the relevant records. Ministry staff also provided a branch-by-branch breakdown of the records to be searched, and the fees associated with each search.

It was apparent that the bulk of the search fees related to the archived electronic records, which are not indexed, and to the cost of hiring an external consultant to review the electronic tapes, as expertise to do this no longer exists within the ministry.

After considerable discussion, the appellant agreed to submit a new request in light of the information provided to him during this conference call. His new request would focus on existing paper records from one specific branch, and the appellant suggested that he may submit subsequent requests based on his analysis of these initial records.

At the conclusion of this telephone call, the appellant agreed to close these three appeals.

Communication, effort and compromise the keys to resolving this appeal

The Town of South Bruce Peninsula received a 14-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to an experiment conducted in the year 2000, on the use of chlorine dioxide in drinking water. The requester also provided the town with a summary of his personal income tax records for three years and requested a fee waiver.

The town granted the requester access to records responsive to 10 parts of his request. With respect to the remaining four, the town directed the requester to other agencies on the basis that these bodies would have a greater interest in the requested records. The town also advised that the cost for providing the requested information would be $126.16.

In response to his request for a fee waiver, the town provided the appellant with a certified copy of a resolution passed by council, as well as a certified copy of a bylaw which establishes fees for services provided by the municipality. The town also advised the requester that, upon receipt of the fee, it would provide him with a copy of a record responsive to one of the four outstanding parts of the request. The town reiterated its position that it did not have any more responsive records.

The requester (now the appellant) appealed the fee and fee waiver decisions. In addition, the appellant appealed the town's decision that it did not have records responsive to the remaining parts of his request.

During the course of mediation, the mediator referred the town to the fee provisions prescribed in the regulations under the *Act*. As a result, the town agreed to reduce the fee to $100 and the appellant was satisfied with this resolution.

The appellant continued to assert his belief that the town should have records responsive to the remaining parts of his request. The appellant wrote to the town, setting out the reasons and

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Summaries
CONTINUED FROM PAGE 6

company and several engineering studies respecting a proposed town site.

The ONAS located the responsive records and granted access or partial access to some of them. It denied access to others on the basis that they were exempt under sections 13(1) (advice or recommendations), 15(a) and (b) (relations with other governments), 17(1)(a), (b) and (c) (third party information) and 18(1)(d) (economic interests of Ontario) of the *Act*.

During adjudication of the appeal, Adjudicator Bernard Morrow sought the representations of five affected parties and Indian and Northern Affairs Canada (INAC), a department of the Government of Canada, on the application of the exemptions listed above, as well as section 23 of the *Act* (public interest override). The scope of the request was narrowed to include six records and ONAS withdrew its reliance on section 15(b).

Under section 15(a), the adjudicator found that all of the records relate to "intergovernmental relations" as they pertain to the tripartite land claim settlement negotiations involving the governments of Canada and Ontario, as well as the First Nation. He then went on to consider whether the disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations; specifically, ongoing and future land claims negotiations involving the governments of Ontario and Canada.

The adjudicator concluded that he had been provided with sufficient evidence to uphold a finding that the parties to the land claims negotiations entered into them with the understanding that the information shared, such as that reflected in the records, would be held in confidence. He found specifically that "if the expectation of confidentiality is dashed, along with [it] goes the trust that is crucial to productive negotiations."

The adjudicator found that the ministry and INAC provided him with sufficiently detailed and convincing evidence to establish that "the disclosure of the information contained in the records could reasonably be expected to lead to an erosion of trust and a decreased willingness to share documentation, which would seriously compromise the willingness of the parties to participate in land claim negotiations now and in the future."

He also reviewed the possible application of the "public interest override" provision in section 23 to the information in the records. The adjudicator acknowledged that "[g]overnment openness and transparency are key values underlying the access to information provisions of the *Act*" and that the town site that is the focus of the records is no longer under consideration. The adjudicator found that because the town site is no longer under consideration, any public interest in the records is diminished. He also referred to the public interest in successful land claims negotiations, which entail an expectation of confidentiality by the parties, and found that the public interest favours non-disclosure.

Accordingly, Adjudicator Morrow concluded that the public interest override provision in section 23 had no application to the circumstances of this appeal and upheld ONAS's decision not to disclose the records on the basis that they were exempt under section 15(a).

Mediation Success Stories
CONTINUED FROM PAGE 7

providing documentation in support of his position. In response, the town restated its position that additional responsive records did not exist, but agreed to provide the appellant with a number of other documents. The appellant reviewed these documents and advised the mediator that he would be prepared to resolve this appeal if the town would provide him with written responses to three questions he had relating to the town's involvement in the experiment. The town agreed to provide such a letter and included confirmation that further searches were conducted in all possible areas and no additional records were located.

After reviewing the letter from the town, the appellant advised that he was satisfied and the appeal was resolved. Throughout the course of the appeal, the parties communicated and worked together to achieve a resolution in the spirit of the *Act*.

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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian makes a point at the news conference the IPC held in October to unveil the **Privacy-Embedded 7 Laws of Identity.** She is flanked by Peter Cullen, Microsoft's chief privacy strategist (left) and Kim Cameron, chief identity architect for Microsoft.

Commissioner Cavoukian unveils blueprint for privacy-embedded Internet identity

By Ann Cavoukian, Ph.D
Information and Privacy Commissioner/ Ontario

There is a growing disjunct between the real and online worlds. In the bricks-and-mortar world we live in, we identify ourselves to others according to context and preferences: presenting cash or a coffee card for our coffee; a membership card gains access the gym facilities; a passport allows us to cross the border. Different ID cards are in our wallets, and we are in control of the personal information we disclose to others. In the real world, we can also verify who the other party is before revealing our own identity.

In the digital realm, we have far less control. Online tracking and surveillance, excessive collection of personal information, and online fraud are becoming much more the norm. Consumers are beginning to lose confidence and trust in the online medium, and are starting to drop out. Part of this problem is that there is no convenient way for people to manage their various identities and their privacy online as effectively as they do offline.

On October 18, I announced my support for a global online identity system framework by unveiling far-reaching "privacy-embedded" laws, which would help consumers verify the identity of legitimate organizations before making online transactions.

These laws were inspired by, and map to, the *7 Laws of Identity*, formulated through a global dialogue among security

CONTINUED ON PAGE 4

n this issue:

Recent IPC Publications

The IPC has issued (in order of publication) the following publications since the last edition of *IPC Perspectives:*

Get together, win together: Mediation at the IPC (video). May 2006.

Privacy Guidelines for RFID Information Systems. June 2006.

Practical Tips for Implementing RFID Privacy Guidelines. June 2006.

Commissioner Ann Cavoukian's 2005 Annual Report. June 2006.

What to do When Faced With a Privacy Breach: Guidelines for the Health Sector. July 2006.

If you wanted to know...How to access your personal information held by a municipal organization. September 2006.

Reduce Your Roaming Risks: A Portable Privacy Primer. September 2006.

When Online Gets Out of Line: Privacy – Make an Informed Online Choice. October 2006.

7 Laws of Identity: The Case for Privacy-Embedded Laws of Identity in the Digital Age (paper and brochure). October 2006.

Breach Notification Assessment Tool. December 2006.

All of these publications and more are available on the IPC's website at **www.ipc.on.ca.**

Upcoming Presentations

February 9, 2007.

Commissioner Ann Cavoukian is meeting with the CBC editorial board to discuss ongoing and evolving privacy and access issues.

February 13, 2007.

Commissioner Cavoukian is addressing the Arizona Association of Certified Fraud Examiners. Her topic: *Privacy and Security: Bringing Both into Alignment.*

February 16, 2007.

Commissioner Cavoukian is the keynote speaker at the *B.C. Privacy and Security Conference* at the Victoria Conference Centre.

February 27, 2007.

Commissioner Cavoukian is a special guest speaker at the University of Waterloo. The focal point of her address is privacy issues related to identity.

March 7, 2007.

Commissioner Cavoukian is making a special presentation on access and privacy to the Canadian Armenian Business Council.

May 15, 2007.

Commissioner Cavoukian is a keynote speaker at the Canadian Marketing Association's national conference. Her topic: *Make Privacy Work for You: Gain a Competitive Advantage.*

Canada's first *Right to Know Week* marked

Ontario Information and Privacy Commissioner Ann Cavoukian worked with her counterparts across Canada, and the federal Information Commissioner, to jointly create – and mark – Canada's first *Right to Know Week* in late September, to help build public awareness of citizens' rights to public information.

The timing was based on the international Right to Know Day, September 28. As the Commissioner told a sold-out *Right to Know Week* luncheon at the Ontario Club, it was on Sept. 28, 2002, that Freedom of Information organizations from various countries around the globe met in Sofia, Bulgaria, created a network of Freedom of Information Advocates and agreed to collaborate in the promotion of individuals' right of access to information and open, transparent government.

"The right of citizens to access government-held information is absolutely essential," said Commissioner Cavoukian. "Otherwise, citizens cannot hold elected and appointed officials accountable to the people they serve. Without openness and accountability, you cannot have a strong democratic society."

The Commissioner served as the moderator for a special panel at the *Right to Know Week* luncheon, which was organized by the IPC and co-sponsored by the Canadian Newspaper Association and the Toronto Region branch of the Institute of Public Administration of Canada.

Commissioner Cavoukian stressed that her foundation message to Ontario's provincial and municipal government institutions is that "exemptions to the release of information should not be claimed routinely just because they are technically available. They should only be claimed if they genuinely apply. The default position should always be disclosure."

The three panellists included Brian Beamish, IPC Assistant Commissioner (Access), Anne Kothawala, president and CEO of the Canadian Newspaper Association (CNA), and Robert Cribb, an award-winning *Toronto Star* reporter and past-president of the Canadian Association of Journalists.

Beamish, who outlined the role of the IPC as the appeal level in the freedom of information process, stressed the importance of government transparency.

Kothawala told the predominantly civil servant audience some of the problems that a recent FOI audit sponsored by the CNA had uncovered. Reporters from 40 newspapers or news agencies across Canada had gone to municipal and federal offices seeking specific types of information – first through over-the-counter requests, then through formal FOI requests if the informal approach was rejected. While the information sought was released in some cases – release of the same type of information was denied in others. (For more information: **http://www.cna-acj.ca/Client/CNA/cna.nsf/web/CNA+releases+2006+FOI+Audit?OpenDocument.**)

Cribb, who was directly involved in helping to plan for and then review the results of the audit, said some government officials simply did not understand that Canadians have a right of access to the information held by governments.

IPC Adjudicator Steve Faughnan was presented with a recognition award by the Society of Ontario Adjudicators and Regulators (SOAR) at its recent annual Conference of Boards and Agencies, which is attended by chairs, vice-chairs and members of Ontario's adjudicative and agency community. One of four recipients of the award, it was given to Faughnan in recognition of his past work as a member of SOAR's education committee and as inaugural chair of the adjudicator training course revamp sub-committee.

Commissioner unveils blueprint for privacy-embedded Internet identity

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and privacy experts, headed by Kim Cameron, Chief Identity Architect at Microsoft. The *7 Laws of Identity* proposed the creation of a revolutionary "identity layer" for the Internet, providing a broad conceptual framework for a universal, interoperable identity system.

The *Privacy-Embedded 7 Laws of Identity* that I unveiled in October incorporate additional key insights from the privacy arena. An extension of the original *7 Laws*, they encourage privacy-enhanced features to be embedded into the design of IT architecture and be made available early in the emerging universal identity system.

The Internet was built without a way to know who and what individuals are connecting to. This limits what people can do and exposes computer users to potential fraud. If the IT industry and government do nothing, the result will be rapidly proliferating episodes of theft and deception that will cumulatively erode public trust. That confidence is already eroding as a result of spam, phishing and identity theft. The *Privacy-Embedded 7 Laws of Identity* supports the global initiative to empower consumers to manage their own digital identities and personal information in a much more secure, verifiable and private manner.

Just as the Internet saw explosive growth as it sprang from the connection of different proprietary networks, an "Identity Big Bang" is expected to happen once an open, non-proprietary and universal method to connect identity systems **and** ensure user privacy is developed in accordance with privacy principles. Microsoft started a global privacy momentum. Already, there is a long and growing list of companies and individuals that now endorse the *7 Laws of Identity* and are working towards developing identity systems that conform to them.

The privacy-enhanced laws will help to minimize the risk that one's online identities and activities will be linked together.

Just as important, identity systems that are consistent with the *Privacy-Embedded 7 Laws of Identity* will help consumers verify the identity of legitimate organizations before they decide to continue with an online transaction.

The next generation of intelligent and interactive web services ("Web 2.0") will require more, not fewer, verifiable identity credentials, and much greater mutual trust to succeed.

In brief, the *Privacy-Embedded 7 Laws of Identity* offers individuals:

- easier and more direct user control over their personal information when online;
- enhanced user ability to minimize the amount of identifying data revealed online;
- enhanced user ability to minimize the linkage between different identities and actions;
- enhanced user ability to detect fraudulent messages and websites, thereby minimizing the incidence of phishing and pharming.

We have called upon software developers, the privacy community and public policy-makers to consider the *Privacy-Embedded 7 Laws of Identity* closely, to discuss them publicly, and to take them to heart.

Many have already taken us up on our call, stepping forward to present their own identity management projects and to explain how their solutions are user-centric, privacy-respecting and privacy-enhancing. The IPC is currently in talks with several collaborative, open-source identity management initiatives, such as members of Liberty Alliance (which includes such companies as Sun and Oracle) and members of Project Higgins (which includes IBM and many others), to further advance individual privacy in the identity age.

More information about the *Privacy-Enhancing 7 Laws of Identity* is available at: www.ipc.on.ca/index.asp?navid=67&fid1=15.

Commissioner Ann Cavoukian addresses Powerpoint Group's **Women of Influence** September luncheon at the Fairmount Royal York Hotel. Her talk, **Defy the Odds**, about the challenges she personally has had to overcome, attracted a sold-out audience.

IPC relaunches its quickly growing website

The IPC relaunched its website in October, after an extensive makeover, to help make it easier for visitors to find specific types of information on the quickly growing site.

For example, since the IPC has more than 5,000 orders and investigation results posted, the new website offers various ways to refine a search using various indices.

To find the **Subject Index** (orders or investigations related to a particular topic) or **Section Indices** (orders or investigations related to a specific section of one of the *Acts)*, click on **Decisions & Resolutions.**

On the left side of the new page, you will see two tabs: **Browse by Legislation** and **Browse by Subject.**

If you want a **Section** Index, click on **Browse by Legislation,** then on:

- whichever one of the three *Acts* (*Freedom of Information and Protection of Privacy Act,* the *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act*) applies,
- then click on the plus sign, which will bring up the Section Index for that *Act.* As a bonus, the right-hand column cross-references the results with the Subject Index.

For example, if you select the provincial *Act* (*FIPPA*) and then click the **plus (+) sign** to bring up the Section Index for that *Act*, you can then click on the section or subsection you are interested in – say, section 15. You will see there are seven orders related to this section. (These orders relate to section 15 specifically and do not include orders relating to its subsections.)

The right-hand column contains a list of the subjects that the seven orders cover. One subject is cabinet records (two orders). If someone was looking for orders related to section 15 **and**

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Protect the information you take out of the office

Minimize and secure the data before leaving the office.

But if you do lose – or have the personal information of clients or staff stolen – act immediately.

These are two of the key messages in *Reduce Your Roaming Risks: A Portable Privacy Primer*, produced jointly by the IPC and BMO Financial Group and released in September.

There have been a number of news reports over the past couple of years of large privacy breaches, when portable computers or other devices holding the personal information of thousands are either lost or stolen.

This brochure provides a series of checklists and steps to take to reduce the chances of a privacy breach occurring when people are working with personal information away from the traditional office setting.

"Our consistent message has been that organizations must step up and take action to help prevent breaches of information which can lead to identity theft," said Information and Privacy Commissioner Ann Cavoukian. "This very practical, hands-on brochure can be a key tool; it helps to create what we call a culture of privacy. I applaud BMO for embracing this approach."

Among the recommendations that the Commissioner and BMO make in the brochure:

- Always use strong password protection, preferably in conjunction with data encryption;
- Do not remove any client information from your organization's network or premises without proper authorization from your supervisor;
- Remove all confidential information, or any devices containing confidential information, from plain sight in your vehicle. Lock your valuables in the trunk **before** you start the trip, not in the parking lot of your destination;
- In public places, do not discuss any confidential information on your cell phone; and
- Only conduct confidential business on business or personal computers. Do not use public computers or networks, or conduct business in public places.

Laptops, PDAs and, more recently, cell phones, are considered to be the "golden eggs" by identity thieves.

Here are some of the precautions the brochure recommends be taken to minimize the risks:

- Ensure that all of your devices require passwords for access: power-on passwords, screensaver passwords, account passwords. Strong passwords consist of at least eight characters, upper and lower case, numerals and special characters. The password should not be a word that can be found in any dictionary;
- Enable the automatic lock feature of your device after five minutes of idle time;
- Encrypt your data according to your company's policies. This is essential if you transport personal and/or confidential customer data – it should never be left in "plain view;"
- When no longer needed, remove all confidential data from your devices using a strong "digital wipe" utility program. Do not simply rely on the "delete" function;
- If you handle confidential information online or perform financial transactions, then your laptop (and sometimes your PDA) should, at a minimum, have a personal firewall, anti-virus and anti-spyware protection. In addition, install the latest updates and security patches for your mobile devices, including your cell phone;
- When connecting to public wireless networks or HotSpots in airports, hotels, coffee shops, etc., bear in mind that these networks are inherently unsafe. Remember the following:
  - Watch out for shoulder surfing – someone "casually" observing the work on your laptop;
  - Never connect to two separate networks simultaneously (such as Wi-Fi and Bluetooth);
  - Do not conduct confidential business unless you use an encrypted link to the host network (such as a Virtual Private Network – VPN).

The brochure also contains advice on what to do if you lose confidential data – your own and/or that of clients (take immediate action!) – as well as providing a quick reference checklist.

Reduce Your Roaming Risks is available on the IPC's website at **www.ipc.on.ca**.

Students urged to think about privacy when selecting a social networking site

Commissioner Ann Cavoukian spoke about privacy and social networks to open the **Ethics at Ryerson Speaker Series** at Toronto's Arts and Letters Club in October. With her, just prior to her presentation, are (from left), Assistant Privacy Commissioner Ken Anderson, Chris Kelly of Facebook, privacy consultant and former U.S. Federal Trade Commissioner Mozelle Thompson, and Brian Jensen and Ifoma Smart of Privasoft.

Online social networking sites – where individuals can post all kinds of personal information about themselves and their friends, including pictures – have become a social and technological phenomenon.

After media coverage of problems sparked by some of these public postings, Commissioner Ann Cavoukian became concerned that many of the college and high school students who flocked to some of the more prominent sites were not fully aware of what posting some types of personal information – without considering privacy options – could mean.

There were media reports about incidents of stalking or identity theft. And there were also other issues that were not always immediately apparent. Photographs of students at wild parties, or posing in questionable situations, can result in prospective employers screening out potential employees. (More and more companies are doing web searches on prospective employees, according to several surveys.) And it is not just photos. What seems at the time to be witty social commentary or satirical political comments posted on a person's publicly viewable profile have been used as grounds for termination or denial of employment.

Despite most online social networking websites having privacy policies and optional settings that can limit access to sensitive information, the Commissioner discovered that many students were often not taking the time to investigate the privacy choices they had online.

Commissioner Cavoukian sat down with a small focus group set up by the IPC (students from six Canadian universities) to discuss the students' use of social networking websites, whether any had ever read the privacy options, any concerns they might have for their privacy and other related issues. "This was a great session," said the Commissioner. "They were all so bright, so open to this discussion ... but they were not worried about their privacy and had not taken the time to consider privacy options before starting to post personal information on these websites."

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PHIPA order cites a "blatant disregard" for the privacy of a hospital patient

Commissioner Ann Cavoukian issued her second order under Ontario's *Personal Health Information Protection Act* (*PHIPA*) in July, following an investigation into a serious breach of a patient's privacy at the Ottawa Hospital.

A patient had informed the staff that she did not want her estranged husband and his girlfriend, both employees of the hospital, to be made aware of her admittance or to have access to her personal health information.

What occurred was the exact opposite, as the girlfriend of the patient's estranged husband – a nurse who was not involved in the patient's treatment – was able to access the patient's hospital records – both before and after the initial violations were brought to the attention of hospital officials.

Upon receiving the complaint, the hospital took immediate steps to flag the patient's electronic health record (EHR) and an audit confirmed that her estranged husband's girlfriend had inappropriately accessed her EHR. However, the hospital did not take immediate steps to prevent the nurse from gaining further unauthorized access to the patient's health information. The Commissioner's investigation concluded that the nurse inappropriately accessed the patient's EHR on three occasions after the complaint was made.

The Commissioner concluded that the nurse, as an employee of the hospital, "used" the information in contravention of *PHIPA*. The hospital itself violated *PHIPA* by not following internal hospital policies related to the protection of patients' privacy, and failing to take immediate action to prevent any further unauthorized use of the patient's personal health information.

In HO-002, the Commissioner ordered:

- the hospital to review and revise its practices, procedures and protocols relating to patient health information and privacy, and those relating to human resources, to ensure that they comply with the requirements of the *Act* and its regulations, taking into account the concerns expressed in this order about the paramount importance of protecting patients' personal health information;
- that the hospital, as part of the review under order provision, implement a protocol to ensure that reasonable and immediate steps are taken, upon being notified of an actual or potential breach of an individual's privacy, to ensure that no further unauthorized use or disclosure of records of personal health information is permitted;
- following the review, that the hospital ensure that all employees and/or agents of the hospital are appropriately informed of:
  (a) their duties under the *Act* pursuant to section 15(3)(b) of the *Act*;
  (b) their obligations to comply with the revised information practices of the hospital pursuant to section 10(2) of the *Act*.

The Commissioner also urged the hospital to issue a formal apology to the complainant.

As part of a postscript to her order, the Commissioner said:

"...Despite having alerted the hospital to the possibility of harm, the harm nonetheless occurred. While the hospital had policies in place to safeguard health information, they were not followed completely, nor were they sufficient to prevent a breach of this nature from occurring. In addition, the fact that the nurse chose to disregard not only the hospital's policies but her ethical obligations as a registered nurse, and continued to surreptitiously access a patient's electronic health record, disregarding three warnings alerting her to the seriousness of her unauthorized access, is especially troubling. Protections against such blatant disregard for a patient's privacy by an employee of a hospital must be built into the policies and practices of a health institution."

"This speaks broadly to the culture of privacy that must be created in healthcare institutions across the province. Unless policies are interwoven into the fabric of a hospital's day-to-day operations, they will not work. Hospitals must ensure that they not only educate their staff about the *Act* and information policies and practices implemented by the hospital, but must also ensure that privacy becomes embedded into their institutional culture."

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In October, the Commissioner and Facebook.com, a large social networking site, launched a joint brochure, *When Online Gets Out of Line: Privacy – Make an Informed Online Choice*. The brochure focuses on informing students about how personal information posted on a social networking website today could result in future consequences – whether it be employment or educational repercussions, reputation damage, or even stalking. The brochure urges all users of online social networking websites to inform themselves about their privacy settings on all websites, to actively use those privacy settings, and to constantly review a website's privacy policy.

The message the Commissioner is conveying through the brochure – and in presentations and interviews – is "control." Only a user can control the privacy settings on a social networking website, only a user can control what information to post or not to post online. Above all, the brochure stresses that the final decision to post personal information online rests with the individual, but each person should make an informed choice before doing so.

The Commissioner launched her online social networking initiative and the brochure at Ryerson University's *Ethics at Ryerson* speaker series Oct. 12, to a group of business professionals, university professors, and university and college students. Thousands of copies of the brochures have been distributed to universities and colleges across Ontario, and other provincial privacy commissioners have also used the IPC brochure in public awareness campaigns relating to online social networking.

Commissioner Cavoukian has also taken this initiative to high school students – making a presentation at Bishop Strachan School in Toronto in early December, where she spoke on the topic of cyber-bullying. The Commissioner outlined the potential impact of online activities, including what the long-term consequences could be. Her key message: "Anything posted online can stay online forever and may be searched by teachers, university administrators, or prospective employers. This information creates an 'online résumé' that you will not be able to control." Before posting anything on the Internet, urged the Commissioner, "Think, before you click."

IPC
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ROM PAGE 5

cabinet records, he or she would only need to check the two orders, rather than all seven.

If you want to search using the **Subject Index**, click on **Browse by Subject.**

Select the subject you are interested in (click the plus sign to expand a subject). If you click on Advice or Recommendations, the first 10 of the 105 orders related to this subject will be displayed in the middle of the screen. (You can scroll through all 105, if desired.) In the right-hand column, the orders will be cross-referenced by the Section Indices. If the searcher wants to know how a particular section applies to the subject he or she has selected, he/she can click on the section, which will refine the results (reducing those 105 orders down to the number related to **both** the section and subject).

There is a wide variety of information posted on the website, from IPC publications to submissions to news releases to presentations to "how to" information. If, for example, you want to learn how to file an **appeal** or a **privacy complaint** to the IPC, or how the IPC deals with these, just click on **About Us**, one of the main menu options at the top of the page, then click on **IPC Procedures.**

There is a multi-level search function allowing you to do a quick search of the site using the search box at the top-right corner of the screen, browse publications and orders, or do an Advanced Search. However, if you are unsure exactly what you are looking for, or just browsing, you can go to the **Site Map** (one of the menu options at the top of the page) for an overview of how the website is set up. There is also a **Help** page that you can access from the IPC's homepage at **www.ipc.on.ca**, as well as from many other sections of the website.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals or privacy complaints that have been resolved through mediation.

Police, appellant worked together to resolve appeal

The Pembroke Police Service received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for "the investigation notes ... together with a copy of any documentation arising out of the investigation" regarding a missing deposit bag. The police denied access to the responsive records pursuant to section 8(2)(a) and 14(3)(b) of the *Act*. The requester (now the appellant) appealed the decision to the IPC.

During a background meeting with the mediator, the appellant's representative indicated that the freedom of information request was made in an effort to adduce written evidence that the appellant was no longer under investigation. The mediator set up a teleconference meeting with both parties so that they would have an opportunity to share their concerns directly with one another.

At the teleconference mediation session, the appellant's representative outlined his concerns and the police service indicated that though it was not prepared to revise its decision, it was prepared to prepare a letter advising that there was insufficient information to list the appellant as the lone suspect.

Though the appellant's representative did not get access to the records in dispute, he nonetheless was satisfied with the process and the police service's willingness to provide as much information as it deemed possible under the *Act*.

By working together to find solutions rather than as adversaries, the parties were able to agree on a mediated resolution that addressed their concerns.

Form created, policy being developed, after PHIPA complaint

The IPC received a complaint under the *Personal Health Information Protection Act* from an individual who had been denied a request she made to her former employer's occupational health department to correct her occupational health record. The employer is a health care facility.

The occupational health department had responded in writing to the complainant's request to correct her record. The response letter denied the request and indicated that the complainant's request letter would be added to the file.

The complaint proceeded to mediation at the IPC and the mediator had several telephone discussions with both parties.

The complainant indicated that the record involved was an entry made by an occupational health nurse in the complainant's occupational health record. The entry arose as a result of the complainant's visit to her employer's occupational health department, due to discomfort while at work. The complainant was of the view that the entry was incomplete and inaccurate and should be corrected to reflect that her discomfort was work related, possibly due to the physical requirements of her job. The complainant also indicated that in the facility's response to her request, no rationale was provided for denying the request.

The facility indicated that the entry reflected the nurse's recollection of the complainant's visit. Specifically, it was the nurse's practice to ask each employee with a concern if he or she felt the symptoms were work related, and, if so, to document that the concern was work related and provide the employee with a workplace occurrence report for completion. In this case, the complainant did not complete a workplace occurrence report. In addition, the facility indicated that the nurse would not be able to change the entry to reflect a possible diagnosis, as diagnosing was beyond the scope of nursing practice. The facility also indicated that there was no supporting documentation to warrant changing the entry.

The health care facility also indicated that, as a result of the complaint, it has developed a form to enable individuals to request a change in their personal health information and was in the process of developing a policy regarding the correction of personal health information. In addition, the facility's privacy manager suggested to the facility that she be notified if requests for correction of personal health information are received. And, the privacy manager advised the facility that requesters should be provided with written reasons in cases where corrections to personal health information are denied.

After further discussions with the mediator, the complainant agreed, in resolution of this complaint, to prepare a statement of disagreement and submit it to the facility for consideration. The facility confirmed in writing to the complainant that the statement was received, appended to the occupational health record and would be released whenever the file is released.

The day that the lights went out

Most people who live in southern Ontario remember exactly where they were in the summer of 2003 when the lights went out – after a failure in an American power grid linked to a number of states and Ontario sparked a massive blackout.

The blackout resulted in some lingering problems and gave rise to a number of access requests.

In this case, a requester wanted to know if there were any environmental concerns caused by the blackout. He made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Environment for access to certain records.

The ministry responded that, after a thorough search through the files of its Investigations and Enforcement Branch, no records were located that were responsive to the request. The requester (now the appellant) appealed that decision to the IPC.

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Summaries

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Order MO-2072
Appeal MA-040138-2
Toronto District School Board

This appeal involved a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto District School Board for access to a copy of the evaluation report prepared by the board with regard to its *request for proposals* (*RFP*) for the provision of information technology contract staff.

The board located one responsive record, a spreadsheet referred to as the "bid evaluation," a summary report evaluating the bids it received and considered. The bid evaluation consisted of several categories of pricing information, comprised of staff pay rates for various positions, margins, overtime rates, discounts and other fees drawn from the proposals submitted by the 24 affected parties in response to the RFP. The bid evaluation also contained information under the heading, "reasons for disqualification."

The board applied the third party information exemption in section 10(1) of the *Act* to deny the requester access to the record. The requester appealed the decision to the IPC, and the board and 10 of the affected parties submitted representations claiming that disclosure of the information at issue could reasonably be expected to result in one of the harms listed at section 10(1)(a) and 10(1)(c) of the *Act*. In support of their position, the board and the affected parties provided evidence as to what competitors would stand to gain from disclosure, including access to inside pricing and costing information, and the ability to underbid competitors. Adjudicator Bernard Morrow found that these sections did not apply, as the board and the affected parties had not met the harms test, and he ordered the release of the records in their entirety.

In reaching his decision, the adjudicator agreed that the decision whether to disclose specific bid information must be approached in a careful way in each case, considering the tests as developed over time by this office while appreciating the commercial realties of the RFP process and the nature of the industry in which it occurs [see Order MO-1888].

This decision is significant as it highlights that disclosure of pricing information does not automatically give rise to a reasonable expectation of harm.

In making his decision that the harms test under section 10(1) was not met, Adjudicator Morrow took into account the following factors:

- eight of the 24 affected parties consented to the release of their information;
- the information at issue was submitted by the affected parties more than two and a half years ago and there was little evidence to suggest that this information would be of any value to competitors today; and
- while price could play an important role in determining success in the bidding process, it was not the only assessment criteria that appeared in the bid evaluation, as the record also set out each affected party's overtime policy, price guarantee date, discount criteria and additional notes on particular points of interest in specific proposals.

Order PO-2494
PA-040327-1
Ministry of Community Safety and Correctional Services

This appeal involved a request made to the Ministry of Community Safety and Correctional Services under the *Freedom of Information and Protection of Privacy Act* for records relating to the appellant's firearms possession licence. The appellant had made the request following the execution of a search warrant at her residence by the OPP in a separate law enforcement matter unrelated to the request.

The responsive records included photographs and video tapes made during the search, OPP officers' notes, and internal OPP e-mails relating to the search and subsequent charges.

The ministry relied on section 49(a) (limitations on an individual's right to obtain own personal information), in conjunction with section 19 (solicitor-client privilege) of the *Act*, to withhold all of the records at issue. The ministry also relied on section 49(b) in conjunction with section 21 (personal privacy) to withhold some information.

The ministry submitted that because copies of the withheld records were included in the Crown brief maintained by Crown counsel for the purposes of a criminal prosecution, section 19 applied to the records. The ministry argued that any records in its possession that found their way into the Crown brief should automatically be seen as meeting the "prepared for Crown counsel in contemplation of or use in litigation" test described in section 19.

In rejecting the ministry's argument, Brian Beamish, Assistant Commissioner (Access), found that the records were prepared for investigative purposes to assist it in determining whether to lay criminal charges for possession of firearms. He found that this purpose was distinct from Crown counsel's use of copies of the records in order to decide whether or not to prosecute criminal charges and, if so, using the records to conduct the litigation. The Assistant Commissioner found that the fact that copies of the records found their way into the Crown brief does not alter the purpose for which the records were originally prepared and now maintained by the ministry.

In arriving at this decision, the Assistant Commissioner took into account the fact that investigative records

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Mediation Success Stories

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During the mediation process, the mediator first contacted the appellant. The appellant acknowledged that the request letter to the ministry may not have been as clear as was intended. The letter did not include sufficient detail to help the ministry conduct a proper search.

The mediator suggested that a conference call be set up involving the appellant, the mediator and the ministry. During this conference call, the appellant was able to clarify his request and provide additional details. As a result of this discussion, the ministry agreed to conduct an additional search for records and expanded the search to include different departments.

The ministry located responsive records and granted access to the appellant. After reviewing the records, the appellant advised the mediator that he was satisfied with the records provided and that there was no need to pursue his appeal. The appellant was appreciative of the fact that the ministry had given him the opportunity at the teleconference to explain his request.

The conference call lasted less than half an hour and resulted in the appellant obtaining the information he was seeking. As a result of the direct communication between the appellant and the ministry, this appeal was successfully resolved.

Summaries

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are protected by the law enforcement provisions of section 14 of the *Act*. He also found that to accept the ministry's argument would be to extend the ambit of section 19 to almost any investigative record created by the police. The Assistant Commissioner was of the view that this would undermine the access to information purposes of the *Act*. He stated that if he found that the privilege exemption applied in the circumstances of this appeal, the result could be that records that police across Ontario now routinely disclose would be withheld in the future, thereby fundamentally altering a long-standing disclosure practice.

He also found that some of the information the ministry withheld under sections 49(b)/21 was exempt, while some was not exempt.

Accordingly, Assistant Commissioner Beamish ordered the ministry to disclose the responsive records to the appellant, with the exception of the exempt personal information.

Order PO-2500
Appeal PA-030106-5
Ministry of the Environment

The Ministry of the Environment received a request for all information produced within the ministry or received by the ministry associated with any environmental reports involving the Bruce Nuclear Power Development in Tiverton, Ontario.

This appeal is the fifth of a series of appeals to the IPC arising from the same request. The history of the first four appeals is described in detail in Order PO-2243, which resolved Appeal PA-030106-4. In response to that order, the ministry decided to disclose a portion of the responsive records and to deny access to other records, in whole or in part, pursuant to the exemptions at sections 14(1)(i) (security of a building), 16 (national security), 17(1)(a) and (c) (third party information), 19 (solicitor-client privilege), 21(1) (personal privacy) and 22(a) (publicly available information) of *the Freedom of Information and Protection of Privacy Act* (the *Act*).

In her appeal letter, the appellant raises the possible application of the "public interest override" at section 23 to the information contained in the records.

The ministry's representations respecting section 16 focus primarily on its concerns about the potential for violent attacks against the Bruce nuclear facilities. The ministry also makes it clear that its concerns arise from the fact that, once information is disclosed, it is in the public domain. The ministry included in its representations advice it received from the local police force concerning the impact of disclosing the records for which it claimed this exemption.

Adjudicator John Higgins points out that the governments of Canada and the United States have both taken steps to minimize the risk of attacks intended to harm their populations in the wake of the terrorist attacks of September 11, 2001 with legislative action, for example the U.S. *Patriot Act* and Canada's *Anti-Terrorism Act*. Clearly, in the view of the adjudicator, this risk extends to facilities such as nuclear power plants.

The adjudicator, having reviewed the records and the submissions of the parties, found that the disclosure of records or parts of records setting out detailed technical information about the nuclear and related operations of the Bruce facility could reasonably be expected to "... prejudice the defence of Canada ... or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism" and was, therefore exempt under section 16.

Adjudicator Higgins protected further records under the solicitor-client privilege exemption, while the remainder of the records, for which other exemptions were claimed, were ordered released.

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